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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DONNA CURLING, ET AL.,	:	
	:	
PLAINTIFFS,	:	
vs.	:	DOCKET NUMBER
	:	1:17-CV-2989-AT
BRAD RAFFENSPERGER, ET AL.,	:	
	:	
DEFENDANTS.	:	

TRANSCRIPT OF BENCH TRIAL - VOLUME 2 PROCEEDINGS
BEFORE THE HONORABLE AMY TOTENBERG
UNITED STATES DISTRICT SENIOR JUDGE
JANUARY 10, 2024

MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

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UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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P R O C E E D I N G S

(Atlanta, Fulton County, Georgia; January 10, 2024.)

THE COURT: Morning. Have a seat.

We're ready to begin with the next witness?

MR. FISHER: Yes, Your Honor.

THE COURT: All right. Go ahead.

THE PLAINTIFFS' CASE (Continued).

MR. FISHER: The plaintiffs call Donna Price.

(There was a brief pause in the proceedings.)

COURTROOM DEPUTY CLERK: If you would please stand
and raise your right hand.

(Witness sworn)

COURTROOM DEPUTY CLERK: Please state your name and
spell your complete name for the record.

THE WITNESS: Yes. My name is Donna Price.
D-O-N-N-A, P-R-I-C-E.

Whereupon,

DONNA PRICE,

after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. FISHER:

Q. Good morning, Ms. Price.

A. Good morning.

Q. Ms. Price, where are you from?

A. I'm from Atlanta.

1 Q. Where did you go to high school?

2 A. I went to Sandy Springs High School.

3 Q. Is that around this area?

4 A. Yes, it is.

5 Q. Did you graduate high school, ma'am?

6 A. I did.

7 Q. What did you do after graduation?

8 A. After graduation, I married. We started a family. And my
9 husband was in the Marine Corps so we traveled around a bit.

10 Q. Where did you travel?

11 A. We went to North Carolina, Virginia, and Tennessee. And
12 he was eventually transferred to San Diego, California.

13 Q. How long were you in San Diego?

14 A. We were there 20 years.

15 Q. Did you ever go to college yourself?

16 A. I did.

17 Q. Where did you go?

18 A. I went to Sandy Springs -- excuse me. I'm nervous.
19 I went to San Diego State University.

20 Q. What did you study there?

21 A. I studied art.

22 Q. And did you graduate from there as well?

23 A. I did.

24 Q. What did you do after graduating college?

25 A. I worked -- I continued to work at the University for

1 about a year, and then I obtained employment at the San Diego
2 Museum of Art.

3 **Q.** What did you do at the San Diego Museum of Art?

4 **A.** Well, I was brought in as a curatorial assistant. One of
5 the things I found about the system of keeping track of the
6 records of the art collection was that they were still using --
7 they had cards, hand cards.

8 And so this was the time when we had our early small,
9 little computers, little -- I had a little Mac, and I found a
10 collection management system that we could design to hold the
11 collections for the museum. So I set up that system. That was
12 one of my jobs.

13 **Q.** Now, you said you were in San Diego for about 20 years.

14 **A.** I was.

15 **Q.** Where did you go next?

16 **A.** I came back to Atlanta.

17 **Q.** Why did you come home?

18 **A.** I wanted to be near family.

19 **Q.** And did you continue to work when you moved home to
20 Atlanta?

21 **A.** I did. I was able to get employment at Emory University.

22 **Q.** What did you do at Emory?

23 **A.** When I -- I had several -- wore several hats while I was
24 there. Basically I worked in print and online communications
25 and I worked first at the ethics center.

1 THE COURT: At the what center?

2 THE WITNESS: The ethics center?

3 THE COURT: The ethics center.

4 THE WITNESS: And then I moved to the information
5 technology division. And then my last location at Emory was
6 for the Emory Eye Center.

7 THE COURT: Can you just talk a little bit louder?
8 Thank you.

9 THE WITNESS: Certainly.

10 THE COURT: Just you can get a little bit closer to
11 the -- you don't have to be right next to it. But you have a
12 light voice, so just --

13 THE WITNESS: Yeah, I need to figure out how to --
14 can you hear me now?

15 THE COURT: Yes. I could hear you before. But it is
16 light enough that I just think it is --

17 THE WITNESS: Okay --

18 THE COURT: -- everyone can hear it more clearly.

19 That is perfect. Thank you.

20 BY MR. FISHER:

21 **Q.** Thank you.

22 You mentioned that you worked in the IT department. What
23 was your role in the IT department?

24 **A.** Well, I worked -- first I worked for the CIO for IT. I
25 reported directly to him. And I was in print and online

1 communications. So -- so I created publication. For instance,
2 I worked with the security team to write a monthly article on
3 IT security for the Emory University newsletter that went out
4 once a week.

5 And so once a month I would have a column in there helping
6 students understand how to protect their computers. Also
7 understand how all the new programs that were coming out,
8 educational programs that were being developed using software
9 and -- that were online, helping them learn about these new
10 programs.

11 **Q.** How long in total were you at Emory?

12 **A.** I was there for 28 years.

13 **Q.** And are you retired now, ma'am?

14 **A.** Yes, I am.

15 **Q.** Ms. Price, I want to talk a little bit about your voting
16 history.

17 Are you a registered voter here in Georgia?

18 **A.** Yes, I am.

19 **Q.** Do you remember when you first registered to vote?

20 **A.** Yes, I do.

21 **Q.** When was that?

22 **A.** The graduating class at Sandy Springs was bussed to the
23 election office in Sandy Springs. And we -- as graduating
24 seniors, we were invited to register to vote.

25 Now, I was one month younger than 18, so I preregistered.

1 And then after I married, we traveled so much that I didn't get
2 to vote in Georgia until I had come back to Atlanta.

3 **Q.** And when you came back, was that the first Georgia
4 election you voted in?

5 **A.** Yes.

6 **Q.** Do you remember approximately when that was?

7 **A.** I think it was 1992.

8 **Q.** Okay. And to the best of your knowledge, have you voted
9 in every Georgia election since then?

10 **A.** I know that I have voted in every federal election and
11 most state elections, and less frequently I've voted in
12 municipal elections.

13 **Q.** Have you voted using Georgia's old DRE system?

14 **A.** I did.

15 **Q.** What about Georgia's current BMD system? Have you voted
16 using that?

17 **A.** Yes.

18 **Q.** What about Georgia's absentee system? Have you voted
19 using that?

20 **A.** Yes.

21 **Q.** What was that?

22 **A.** Yes.

23 **Q.** Ms. Price, do you believe it is important to exercise the
24 right to vote?

25 **A.** Yes, I do.

1 Q. Why?

2 A. Well, I am a person who's always had an interest in
3 history. And so I was particularly interested in American
4 history but also history of other governmental systems. And I
5 believe that our system is the best. It allows the most
6 freedom for people.

7 And because of that, voting is really -- that is how the
8 people speak, because the authority of the Government is based
9 on the will of the people. And so in order to know the will of
10 the people, we have to be able to vote and have our votes
11 counted as cast.

12 Q. As a voter -- as a voter here in Georgia, do you have
13 confidence that you can vote and have confidence that your vote
14 will be counted as cast?

15 A. No, I don't have confidence.

16 Q. When was the first time you started to lack that
17 confidence?

18 A. I think the first time that I was drawn to understand more
19 about voting systems in Georgia was right after we changed to
20 electronic technology, which was in 2002. That is when the
21 State was moved to an all statewide electronic voting system.

22 Q. You said you wanted to learn more about that technology.
23 How did you go about doing that?

24 A. I began asking questions. I asked lots of questions. I
25 found experts to talk to. And also I found other people --

1 other voters in the state who were interested in finding out
2 about the voting system too. So we worked together.

3 **Q.** And once you started learning more about the system, did
4 you do anything in response?

5 **A.** I formed an organization. It is called Georgians for
6 Verified Voting. And that was about in 2005 -- 2004 or '5.
7 I'm not exactly sure. And that was intended as basically a
8 clearinghouse for information.

9 I'm not much of a speaker. So I work better like putting
10 information on a website. So I built us a website and
11 accumulated authoritative documents; put those online.

12 And when I found out what top experts said was the most --
13 the best voting system, I put information about that on the
14 website.

15 **Q.** You said you built the website.

16 MR. FISHER: Tony, can we put up the home page?

17 BY MR. FISHER:

18 **Q.** Is this the website, ma'am?

19 **A.** Yes, it is. It is kind of in the small form.

20 **Q.** So you built this website?

21 **A.** Yes, I did.

22 **Q.** What is this page providing to people who access the
23 website?

24 **A.** Actually, it is just talking about election integrity, you
25 know, being an advocate for election integrity. And it talks

1 about just the basic principles for secure, accurate
2 transparent, and reliable voting systems. So it just tries to
3 put it into the ABCs for just the general public, interested
4 voters, to get an idea of what those components are.

5 MR. FISHER: Tony, can we go back to the broader
6 screenshot of the home page? And can you zoom in on Source
7 Docs?

8 There we go.

9 BY MR. FISHER:

10 Q. What is this tab doing -- this page of the website doing?

11 A. That presents some of the authoritative documents that I
12 found that help voters to -- if they are interested in finding
13 out more about the history of electronic voting systems, about
14 the Government or the federal and state laws, about research
15 that has been done by scientists, then I have linked articles
16 on that -- on that page.

17 Q. These are articles that you found?

18 A. Yes.

19 MR. FISHER: You can take that down, Tony, thanks.

20 THE COURT: Are you offering it as an exhibit?

21 MR. FISHER: No, ma'am.

22 THE COURT: All right. Why don't you just, for the
23 record, if you would pull it back up, just identify some of the
24 range of the items that you were posting here. You don't have
25 to read each one individually and -- but just give a sample so

1 for the record if they are not going to be ...

2 THE WITNESS: Okay. So starting early in like around
3 2005 was when some of the most authoritative reports came out
4 about the paperless DRE voting system that we had. So those --
5 I have included those on the website.

6 And, for instance, in 2005, the State of California
7 had scientists come in and look at the source code for the same
8 machine that we were using here in Georgia. And that report is
9 called the California Top to Bottom report. It was done at
10 Berkeley.

11 And scientists from Princeton and Berkeley worked on
12 it. And that led to the decertification of that voting system
13 in the entire state of California. So that happened in 2005.

14 THE COURT: The decertification?

15 THE WITNESS: That is right.

16 THE COURT: So they then replaced it?

17 THE WITNESS: Yeah. They determined that the source
18 code was not secure enough for an election environment. And
19 that is the system that we continued to use until 2000 -- 2020.

20 BY MR. FISHER:

21 **Q.** Ms. Price, you collected this information. What was the
22 purpose of you collecting this information and putting it on
23 the website?

24 **A.** Just to provide information.

25 MR. FISHER: Your Honor, at this time we would offer

1 this page of the source docs from the website into evidence.

2 THE COURT: All right. That makes it simpler. Thank
3 you.

4 Are there any objections to the admission?

5 MR. PICO-PRATS: I would just object on a hearsay
6 ground in terms of what the articles are.

7 MR. FISHER: Your Honor, we're not offering it for
8 the truth. We're just offering it to show that she collected
9 studies to provide to voters so that they can be informed of
10 the voting systems and the issues with the voting systems.

11 THE COURT: That's fine. It is admitted.

12 I mean, we're not admitting all the articles. We are
13 admitting the listing of the articles.

14 MR. FISHER: That's right.

15 Okay. You can take it down. Thanks, Tony.

16 BY MR. FISHER:

17 **Q.** Ms. Price, has the work that you have done with Georgians
18 for Verified Voting informed your lack of confidence that your
19 vote will be counted as cast?

20 **A.** Yes.

21 **Q.** Now I want to talk about the current BMD system a little
22 bit.

23 What aspects of the current BMD system make you concerned
24 about whether your vote will be counted as cast?

25 **A.** There's several aspects. One is that the system is not

1 transparent. And we could go into that if you wanted more
2 information about my opinion on that.

3 The other is that the ballots are not voter verified
4 because they have a QR code. So that even though I can see a
5 printout of selections in an abridged form, the selections that
6 I made on the screen, nevertheless what the scanner is reading
7 as the QR code, but that is not really the only concern.

8 I'm also concerned about the security of the election
9 system. It is very complex. There's multiple software systems
10 and people behind the scenes, proprietary software, that the
11 voter, you know, when we're voting on the system, it is like I
12 feel like I'm handing my ballot to someone behind a screen who
13 just says trust me. I need -- I need proof. I need evidence.

14 **Q.** I want to talk about one of the reasons you mentioned
15 about voter verifiability. You said earlier you voted on a
16 BMD.

17 When did you vote on a BMD?

18 **A.** I had not voted on a BMD or a -- the touch screen voting
19 system since 2016. And that is when I heard about the
20 incursion at Kennesaw. So I had been voting by absentee paper
21 ballot. And this year -- and I had no intention to vote on a
22 BMD. But this -- in November my district doesn't always have
23 questions for municipal elections. And this time they did.

24 THE COURT: In 2016?

25 THE WITNESS: No. I'm sorry. This year in November.

1 THE COURT: This year?

2 THE WITNESS: November of this -- of 2023.

3 So this is the first time that in quite a while that
4 I was -- really wanted to vote in the municipal election. And
5 by the time I understood what the questions were that I wanted
6 to, it was too short a time span for me to order an absentee
7 ballot. So I voted in the polling place.

8 BY MR. FISHER:

9 Q. And when you finished voting on the screen on the BMD,
10 were you able to review your selections before the ballot was
11 printed out?

12 A. I was. There is a summary screen. And so when I --
13 because the wording -- those questions on the ballot were kind
14 of wordy, slightly wordy, and a little bit confusing. Their
15 titles were pretty close to the same. So I had to go back
16 through the different screens to kind of check and compare that
17 I had everything correct on my final -- the final summary
18 screen.

19 And so yes, I was able to review those things and
20 determine that probably I had voted what I intended.

21 Q. Was that -- how long, just broadly speaking, how long did
22 that process --

23 A. I don't really know. It felt like a long time. But I
24 don't think it was that long.

25 Q. And did the machine print out your ballot?

1 **A.** It did.

2 **Q.** Okay. And when it printed it out, did you see human
3 readable text on the ballot?

4 **A.** I could see that there was text, yes.

5 **Q.** Did you verify whether that text matched the selections
6 that you made on the screen?

7 **A.** I forgot.

8 **Q.** Why did you forgot?

9 **A.** I have all this training in elections, and I know all
10 these people who have said you really have to review that
11 ballot. And I cannot explain why.

12 I know that when I had voted on the DREs in the past, when
13 you got to the summary screen you just pushed the button and
14 the ballot was cast and, you know -- so I had finished the
15 summary screen and was satisfied with it.

16 So I can't explain why, except that when I got home I
17 realized that I hadn't confirmed it and I was -- I was
18 disturbed, because I know that is an important part of doing
19 this process with the BMDs.

20 **Q.** You said you were able to see the text, even though you
21 didn't verify it. Was it small? Was it large?

22 **A.** It was small. And I -- sometimes I have to use a
23 magnifying glass now in order to read small print.

24 **Q.** Did you have a magnifying glass on you?

25 **A.** No. And if they had one on the machine, I don't remember

1 seeing one.

2 **Q.** Even if you were -- even if you had remembered to read the
3 printout selections and try to verify whether it matched your
4 votes, would you have been able to cast a verified ballot?

5 **A.** No. Because there is a barcode. And so my votes are
6 communicated to the scanner through that barcode.

7 **Q.** How does that make you feel?

8 **A.** That -- it's -- I'm not happy with it.

9 **Q.** Why aren't you happy --

10 **A.** I don't trust it.

11 **Q.** What did you say?

12 **A.** I don't trust it.

13 **Q.** Why aren't you happy about the fact that you can't cast a
14 ballot that you can trust shows the selections you made on the
15 screen?

16 **A.** When I was there, I was voting in my -- my precinct, one
17 of my neighbors is here today. I was voting in our
18 neighborhood. And it felt so good to be back in the polling
19 place. And I so wished that I could just mark a hand-marked
20 ballot that I could review, that it had my marks on it that I
21 could be certain of, and I could put it into that scanner and I
22 could watch it be counted by the scanner's counter. And I
23 could watch it go into the lockbox and I could know that I
24 had -- my ballot had been cast. And it was in a secure place.

25 And our polling place is also -- all polling places, they

1 print out the tapes after the election of how many people
2 voted, how many ballots were cast, who won the election -- each
3 office through that count. And they post them on the windows.

4 And I have, over the years, gone and taken photos of
5 those. So that that gives me more evidence that my ballot's
6 cast and been counted and those numbers are what goes to the
7 county elections office.

8 **Q.** Ms. Price, why does it matter to you that you're able to
9 have confidence that your ballot and your vote will be counted
10 as cast?

11 **A.** Because really my vote, even though we may have 5 million
12 people voting in an election, my vote is my voice in that
13 collective of everybody's voices. And that is what
14 determines -- it is not who is the most powerful person or the
15 richest person or -- you know, it has nothing to do with that.
16 It is like the will of the people to determine -- to authorize
17 the power for our Government.

18 And so to me that is the most important act that I can do,
19 just through learning history. I grew up with, you know,
20 family who had experienced World War II and I just -- I know
21 the importance of my vote. And I want to make sure that even
22 though it is in that huge -- maybe huge number of votes, that
23 my vote, my voice is counted as cast.

24 **Q.** Does voting absentee alleviate your concerns about whether
25 your vote will be counted as cast?

1 **A.** Well, for years, after learning about the paperless DREs,
2 I campaigned hard with friends and, you know -- that was one of
3 the messages from Georgians for Verified Voting was vote
4 absentee ballot, absentee paper ballot, because we could --
5 there is no barcode on it. So we could see that, you know,
6 we -- that was the official record of our vote. And it was in
7 a paper form so it did not depend on electronics.

8 So what I -- I very much promoted that. But the last few
9 years, and especially now after I have heard about the breach
10 at Coffee County in particular, and I have seen the video of
11 how ballots can be altered using the software -- the voting
12 system. And also hearing experts talk about how many hands
13 that an absentee ballot goes through, other things about the
14 absentee ballot process that the city really believes -- I
15 mean, the State believes that that form of absentee ballot is
16 subject to fraud.

17 So I have really -- I have really lost confidence in using
18 an absentee ballot now and I'm not promoting it anymore.

19 **Q.** What about the process of absentee voting? Do you find
20 that easier or harder than voting in person, ma'am?

21 **A.** It takes a lot of steps, and it takes a lot of vigilance.

22 My polling place is a mile and -- little bit more than a
23 mile and a half from my house. When I -- I make sure I hand
24 deliver my ballots to the ballot box at the -- my county's
25 election office. So -- and that's a 26-mile round trip. And I

1 may have to go back to the county's office for various reasons.

2 For instance, at one point, my signature didn't match. On
3 my application form for the ballot, my signature didn't match
4 the one that they had on file at the county office. So they
5 were kind enough to call me and let me know so that my ballot
6 would still -- I would still be able to get the ballot. But I
7 did have to drive down there and refill out the form.

8 I always have recommended just checking online to the --
9 My Voter page to make sure that my absentee ballot request is
10 accepted and that when they are going to mail my ballot so that
11 I can watch for it. And then if it doesn't come, I want to
12 know, you know, so I can check with the office to see where it
13 is in the process.

14 So it takes -- it takes all those steps. But also the
15 newest form that they have for the absentee ballot has -- it
16 has five warnings. So when you are filling it out, you are
17 reading these warnings saying, well, if you do this, then you
18 are going to have ten years in prison and \$100,000 fine and --
19 so I'm looking at it and I'm thinking, you know, this -- it
20 feels like I'm a second class voter when I have to do it.

21 Because when I went in to the polls, there was a splash
22 screen at the beginning of the BMD screen that says something
23 about, you know, you have to be registered, you have to
24 legitimately be able to vote. But that, you know -- but it
25 didn't feel the same way that it did with the absentee ballot.

1 Q. Voting absentee have you ever become concerned that your
2 vote just wasn't counted?

3 A. I definitely do. One of the things that we can do, we can
4 look at the My Voter page and we can see that our ballot was
5 accepted. But that doesn't -- because I usually will try to
6 get my absentee ballot in right away. So I will be getting it
7 in prior -- you know, maybe weeks prior to the election.

8 And so I don't know -- I don't see, like I would if I was
9 in the polling place using a hand-marked paper ballot and
10 feeding that into the scanner, I don't get to see that happen,
11 you know. So I don't know that it gets counted. I just have
12 to -- I have to, you know, trust, but I can't verify.

13 Q. Are there specific -- do you recall specific, you know,
14 elections where you were concerned that your vote that you
15 casted through the absentee system just wasn't counted?

16 A. Yes.

17 Q. Okay. What were those elections?

18 A. Well, in the presidential preferences primary, I ordered
19 my absentee ballot right away. I think it was in January. And
20 then I received it, and I filled it out, and I sent it in in
21 February.

22 But what happened was -- and this, of course, was COVID.
23 So things got disorganized for, I think, the -- you know,
24 putting on an election. But what happened was, I found out
25 that more -- more candidates were added to the ballot. But I

1 found that out later.

2 The Secretary of State mailed the ballot. I got an extra
3 ballot. And when I got it, I didn't even look at it because I
4 know there's all this concern that people might vote twice.
5 And I just took it and I destroyed it, because I hadn't
6 requested it.

7 So then I found out that more candidates had been added to
8 that, and so I called my county election office, and I asked
9 them if -- what would I do, because I had already voted that
10 other ballot. And they said that I should email a request to
11 them and they would send me another ballot. But it was -- it
12 wasn't enough time, I don't think, to turn it around because I
13 never got that ballot.

14 **Q.** Did you do what they said and apply for a replacement
15 ballot?

16 **A.** Yes, I did. I emailed it.

17 And that is another thing that -- the form requires a lot
18 of personal information in one place. So you have your name.
19 You have your driver's license number. You have your birth
20 date, your address. So this is, you know, what they call P2
21 information.

22 And to send it through a fax, faxes are not secure. So
23 I'm putting my personal voter information, my personal
24 information out into the wild with the threat of that being,
25 you know, found.

1 Q. Any other elections where you applied for a ballot and you
2 just didn't receive it?

3 A. Well, I think for the primary runoff I was supposed to
4 receive a ballot for that. I did not get it. So --

5 Q. Which year was that?

6 A. That was the same year in 2020.

7 Q. And you applied for a ballot that year?

8 A. Well, when you reach a certain age, you only have to apply
9 that once. So in January when I applied, it was for all the
10 elections. But I didn't get one for the primary runoff, so I
11 didn't get to vote in that.

12 Q. Ms. Price, I think you said earlier you're a little
13 nervous to be here today; is that right?

14 A. Right. Yeah. Sorry.

15 Q. Did you choose to be here today?

16 A. No.

17 Q. Why are you here?

18 A. I worked behind a computer for 28 years at Emory. I'm
19 comfortable behind a computer. And that -- of course, with my
20 organization I have the website representing information. But
21 I was never that keen on being the center of attention and
22 being -- you know, speaking in public.

23 Q. Why are you here today?

24 A. Just because I believe that, you know, the most
25 fundamental process for our country to have democracy is that

1 voters are being able to vote in the most secure, accurate,
2 reliable, and voter verified manner so that our votes are
3 counted as cast.

4 **Q.** In spite of your lack of confidence that you can vote and
5 know that your vote will be counted as cast here in Georgia, do
6 you still intend to vote in upcoming elections?

7 **A.** Yes.

8 **Q.** Why?

9 **A.** Well, I think the example of my aunt. We used to talk a
10 lot about voting. And toward the end of her life, she -- she
11 knew that I was working, you know, on elections. She knew
12 about the DRE voting machines. The things that I had told her.

13 But she -- she wanted to vote in the polls. And, you
14 know, voting was very -- so important to her. And she had
15 broken her hip, and she was in a wheelchair. And so I took her
16 to the polls. And she was in a lot of pain getting in and out
17 of the car getting back and forth in that wheelchair. But she
18 had to vote at the polls.

19 And one of the things, when she -- when she was young --
20 she never married. But when she was young, the love of her
21 life went to World War II and he never came back. And when I
22 think about her and her courage and how much it meant to her to
23 vote, even though there was a question about the machine, she
24 went ahead and she -- she did it because that was her sacrifice
25 for our freedom. You know, that is what she did.

1 So that is why I go ahead and do it. But when I go in to
2 vote, whether I'm voting on a BMD or absentee ballot, I feel
3 sick. It makes me feel sick to not have confidence that my
4 vote is going to be counted as cast.

5 MR. FISHER: Thank you, Ms. Price.

6 No further questions, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PICO-PRATS:

9 **Q.** Good morning, Ms. Price. How are you today?

10 **A.** Good morning. I'm good.

11 I'll get a drink here.

12 **Q.** Ms. Price, I have a few questions with relation to what
13 you were talking about.

14 You said that you have an issue in knowing when your vote
15 is cast; is that correct? Or when you cast a vote?

16 **A.** Could you -- could you rephrase that question. I'm not
17 sure what you mean.

18 **Q.** What do you consider a vote counted as cast?

19 **A.** Still I'm not certain what you mean.

20 **Q.** When you go and vote, when do you think your vote is cast?
21 When do you think you cast a vote?

22 **A.** When do I think I cast my vote?

23 **Q.** Yes.

24 What does that mean to you?

25 **A.** Well, if I was voting on a hand-marked paper ballot at

1 the -- my polling place and I put it into the scanner, then I
2 saw the scanner, the number on the scanner would click to show
3 that my vote was processed by that scanner. And it would go
4 into a lockbox and that would be one way that I would be
5 casting my vote.

6 **Q.** And you said that was for a hand-marked paper ballot?

7 **A.** That's correct.

8 **Q.** When do you scan a hand-marked paper ballot?

9 **A.** I vote on the voting system in Georgia. And instead of
10 hand counts or instead of having people, you know, like they
11 did, you know, before technology, instead of just putting your
12 vote in a box in the polling place, you -- it is counted by a
13 scanner.

14 So that is the current system, and I think it is a
15 practical system.

16 **Q.** When you're voting on a voting machine, a BMD voting
17 machine now, what do you consider you casting a vote? What
18 does that mean to you?

19 **A.** I think that would be -- it is not a voter verified
20 ballot. But that would be the paper printout that comes from
21 the BMD that gets fed into the scanner and the QR code is
22 counted.

23 **Q.** And you talked about a verified ballot. What do you
24 consider to be a verified ballot?

25 **A.** A verified ballot is when I can look at the ballot and see

1 that the choices that are marked on the ballot are my choices.

2 **Q.** And do you consider a -- sorry, a ballot that you get from
3 a BMD machine and then you scan, you consider that a verified
4 ballot?

5 **A.** A ballot that I get from a BMD machine that I scan --
6 well, I'm looking at the abridged version if I had -- if I had
7 looked at the ballot and checked it, I would be looking at the
8 abridged version of what was -- what had been on the electronic
9 screen. And then I would be putting it into the tabulator.
10 But the barcode would be read. So that would not be a -- it is
11 not a voter verified ballot.

12 **Q.** So to you, if you read the names on it, you don't consider
13 it verified because of the QR code; is that correct?

14 **A.** In this particular voting system, that's correct.

15 **Q.** And for you, you consider -- if you were to mail an
16 absentee ballot and you marked the votes by hand and then you
17 mail it in, you consider that to be a verified ballot?

18 **A.** The part of marking it is the verification, yes.

19 **Q.** And you talked a little bit before about an issue you had
20 with the BMD machines is that there is a lot of background
21 third-party things that you can't see; is that correct?

22 **A.** That's correct.

23 **Q.** And you have an issue with that; right?

24 **A.** Yes.

25 **Q.** So -- and correct me if I'm misstating this, but you said

1 you were putting your trust in other people; is that correct?

2 **A.** I think it is -- it has -- it is less about putting trust
3 in other people than it does not knowing who is behind the
4 scenes as far as the -- you know, the -- the technology, the
5 people who write the computer code.

6 Every election we have to have people go in and create new
7 ballot definition files. There's a lot of technology and work
8 that goes on behind the scenes that is not visible to the
9 voter.

10 **Q.** And would you say when you mail in an absentee ballot that
11 you don't know what is going on behind the scenes; is that
12 correct?

13 **A.** That's correct. Yes.

14 **Q.** So in both ways of voting, you don't actually know what is
15 going on behind the scenes?

16 **A.** That's correct.

17 **Q.** And you talked -- are you aware that an absentee ballot is
18 scanned when you take it into a -- into a -- when you mail it
19 in? I'm sorry.

20 **A.** That is -- yes. I'm aware of that, that that is the
21 process. But I don't get to see the scanning.

22 **Q.** You talked before that you had an issue verifying your
23 ballot when you went to vote in person this past election; is
24 that correct?

25 **A.** That's correct.

1 Q. Because you didn't have a magnifying glass?

2 A. Well, that wouldn't have been verifying it. That would
3 have been verifying what was printed out by the BMD. But
4 because the barcode is on that ballot, I'm not really verifying
5 what is being fed into the scanner.

6 Q. Right. I didn't mean to trick you.

7 A. That's okay.

8 Q. I meant just the magnifying glass, that was an issue that
9 you couldn't properly read what was on the ballot; is that
10 correct?

11 A. I use a magnifying glass a lot and that would have been
12 helpful.

13 Q. And you know that you're supposed to be able to go in and
14 read what is on the ballot, right, to verify it?

15 A. I do.

16 Q. And knowing that -- you knew that you maybe should have
17 brought a magnifying glass if --

18 A. I didn't think of it, no.

19 Q. But next time if you were to vote again on a BMD machine,
20 would you bring a magnifying glass?

21 A. I hope to not vote on a BMD machine again.

22 Q. But if you had to.

23 A. Actually, I think that they should be supplied at the -- I
24 think some states do have them at the voting locations.

25 Q. And, Ms. Price, do you -- when you voted on the BMD this

1 last time, do you have any evidence that your vote wasn't
2 properly counted as you intended?

3 **A.** No, I don't.

4 **Q.** Okay. And when you voted absentee ballot before, you also
5 don't have any evidence that your vote wasn't properly counted;
6 is that correct?

7 **A.** No, I don't.

8 **Q.** You talked a little bit about the burden that you have
9 requesting -- when requesting an absentee ballot.

10 Do you remember that?

11 **A.** Yes.

12 **Q.** And would you say that burden is something that someone
13 would generally have for anyone that wants to request an
14 absentee ballot?

15 **A.** Could you repeat that. I'm sorry.

16 **Q.** Would you say that is a general burden that other people
17 would have when requesting an absentee ballot, such as printing
18 or --

19 **A.** Right. Definitely, yes.

20 **Q.** And despite that burden, you have frequently voted by
21 absentee ballot; correct?

22 **A.** Yes.

23 **Q.** Ms. Price, when voting on a BMD machine, is it true that
24 without -- believing that without a voter verified ballot, you
25 don't believe that there is a record that you have selected the

1 actual candidates that you intended?

2 **A.** Let's see. That seems like a multiple question. Could
3 you --

4 **Q.** I can clear it up and I can ask a better question. That
5 is probably my fault.

6 Is it true that when you go and vote on a BMD machine, you
7 don't believe there is a record of the -- of the votes that you
8 intended to cast?

9 **A.** I think that there is an abridged version of the -- of the
10 information that I saw on the summary screen that is on that
11 ballot that reflects if I had -- if I had checked it, it would
12 accurately reflect my selections if I could be sure and
13 understand what their abbreviations mean.

14 **Q.** What do you mean by --

15 **A.** Does that make --

16 **Q.** What do you mean abbreviations?

17 **A.** I mean they shorten -- they have to truncate the text, and
18 sometimes when the text is very similar -- like my experience
19 with voting in a municipal election, so sometimes the text for
20 municipal elections can be very wordy so they have to
21 abbreviate it to fit on the ballot.

22 **Q.** And it is true that when voting by a BMD machine you don't
23 think you are actually voting; is that correct?

24 **A.** That's an interesting question. I think that I'm going
25 through the motions of voting.

1 Q. But going through the motions and actually voting is
2 different to you; is that correct?

3 A. It is hard to put this in a simple answer because there's
4 so many factors to have to be able to have reasonable
5 confidence that my vote is counted and that I can trust -- you
6 know, have that reasonable confidence. Security is also
7 another element; transparency is another element, in addition
8 to being able to verify the ballot.

9 Q. So you have no confidence that your vote was accurately
10 counted; is that correct?

11 A. I'm not able to have confidence on this particular
12 system -- voting system the way it is implemented in Georgia.

13 Q. And despite that, you did vote on a BMD machine on
14 November 7, 2023; is that correct?

15 A. Yes. I'm always hopeful.

16 Q. And do you believe your vote was accurately counted then?

17 A. I don't know.

18 Q. And when you vote by absentee ballot, do you know if your
19 vote was accurately counted then?

20 A. No, I don't know.

21 Q. Ms. Price, in terms of what remedy you are seeking in this
22 lawsuit, could you tell me what the remedy is.

23 A. Yes. I think so. It will be an abbreviated version.

24 I would have confidence -- I would have reasonable
25 confidence if I knew that our voting system was based on the

1 principles and knowledge of experts in the field of elections
2 and technology -- excuse me, I'm losing my voice.

3 THE COURT: Why don't you take some water.

4 THE WITNESS: Thank you.

5 THE COURT: Just catch your breath.

6 THE WITNESS: This country has some of the brightest
7 and best election security administrator -- administrative and
8 technology in the world. And those experts are freely giving
9 their information about how to have secure, transparent,
10 accurate, and reliable elections and voter verifiable
11 elections.

12 So if I knew that our voting system, the principles
13 and practices here in Georgia, was based on those kind of
14 principles, then I would have reasonable confidence in the
15 election system.

16 It is like when I get on an airplane, there is a lot
17 of people behind the scenes who have kept that airplane flying.
18 And so I have a reasonable confidence that I am going to be
19 okay, that the plane is not going to fall out of the sky. Do I
20 know absolutely perfectly? No. But I have reasonable, because
21 the science is behind it. And I have seen that there are
22 agencies who ensure that when there are new problems that come
23 up and new concerns with the technology, that they are
24 addressed through science.

25

1 BY MR. PICO-PRATS:

2 Q. So it is true to say that you rely on your experts when
3 coming up with an opinion on remedy; is that correct?

4 A. Well, I'm saying that I think that our voting system needs
5 to be based on principles, scientific principles.

6 Q. But you rely on your experts; is that correct?

7 THE COURT: Well, I think she gave a more complex
8 answer than that. So I would say that that is not a fair
9 characterization.

10 MR. PICO-PRATS: All right. That's all the questions
11 I have.

12 Thank you, Ms. Price.

13 THE WITNESS: Thank you.

14 REDIRECT EXAMINATION

15 BY MR. FISHER:

16 Q. Just briefly.

17 Ms. Price, you were asked whether you know if your ballot
18 was counted when you vote on an absentee or with hand-marked
19 paper ballots.

20 When you vote that way, do you know if your ballot
21 accurately reflects the selections you made?

22 A. When I -- when I complete the ballot by hand, yes, I do.
23 It is voter verified.

24 Q. And when you voted on a BMD, did you know whether your
25 ballot accurately reflected the selections you made?

1 **A.** I didn't know if the ballot that went -- was scanned, the
2 choices that were scanned, I didn't know if those reflected my
3 choices.

4 MR. FISHER: No further questions, Your Honor.

5 MR. PICO-PRATS: Briefly, Your Honor.

6 RE CROSS-EXAMINATION

7 BY MR. PICO-PRATS:

8 **Q.** And, Ms. Price, it is true that you had said before that
9 you don't know for sure, whether you're voting by absentee
10 ballot or through the BMD voting system, what the scanner is
11 tabulating your vote as; is that correct?

12 **A.** I don't get to -- with the hand-marked paper ballot voting
13 by absentee I don't get to see that ballot scanned, so -- and
14 go into a lockbox. So I don't know that my vote is cast on
15 that scanner.

16 **Q.** And you are not sure whether your intent is marked as
17 correct with either voting method; is that correct?

18 **A.** I'm not sure of the question.

19 **Q.** Whether the candidate you voted for is the one that is
20 actually counted? You can't be sure with either voting method;
21 is that correct?

22 **A.** Am I sure that it is counted as cast?

23 **Q.** If the vote that is recorded -- can you be sure that when
24 voting by either absentee ballot or by the BMD system that the
25 vote that you intended to be marked is the one that is actually

1 counted?

2 **A.** I think because there are concerns about security in the
3 system that are very serious, then that raises questions for me
4 about whether that vote will be counted as cast, yes.

5 **Q.** By either voting system?

6 **A.** Yes.

7 **Q.** Okay. Thank you, Ms. Price.

8 MR. FISHER: Nothing further, Your Honor.

9 THE COURT: May the witness be excused?

10 MR. FISHER: Yes.

11 THE COURT: Thank you very much.

12 MR. BROWN: Your Honor, the plaintiffs will call Bill
13 Digges.

14 COURTROOM DEPUTY CLERK: Please raise your right
15 hand.

16 **(Witness sworn)**

17 COURTROOM DEPUTY CLERK: Thank you.

18 Please have a seat. If you would state your name and
19 spell your complete name for the record.

20 THE WITNESS: William Digges, D-I-G-G-E-S.

21 Whereupon,

22 WILLIAM DIGGES III,

23 after having been first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25

1 BY MR. BROWN:

2 Q. Good morning, Mr. Digges. I'm Bruce Brown representing
3 the Coalition plaintiffs.

4 Mr. Digges, are you a named plaintiff in this case?

5 A. Yes.

6 Q. And are you a member of the Coalition for Good Governance?

7 A. Yes.

8 Q. And do you recall about when you became a member of CGG?

9 A. 2017.

10 Q. Backing up a bit, when did you move to Georgia?

11 A. 1996.

12 Q. Can you outline briefly your work history since you moved
13 to Georgia in 1996?

14 A. Yes. I worked for IBM for 32 years. And then I worked at
15 KSU for nine years.

16 Q. And are you retired now?

17 A. Yes.

18 Q. And you mentioned that you worked for IBM for 30-some-odd
19 years.

20 Are you testifying here today as a computer expert or a
21 cybersecurity expert?

22 A. No.

23 Q. At the present time, and in the recent past, do you
24 generally vote absentee ballot by mail or in person?

25 A. Absentee.

1 Q. Why is that?

2 A. I don't generally trust the voting -- BMD voting system.

3 Q. Now, we've heard some testimony and some argument on this
4 issue, and so I sort of want to cut to the chase.

5 You say that you vote absentee by hand rather than on the
6 BMD. But aren't there possibilities that either system could
7 not count your vote properly?

8 A. Yeah. It is possible. But there is a -- there is a
9 permanent record of my vote if I use the absentee process.

10 Q. What is the relationship between having a permanent record
11 of the vote and your trust in the voting system?

12 A. Well, it creates an audit trail that can be verified when
13 we have to go back and audit the elections, which happens.

14 Q. And so that -- so a hand-marked paper ballot that you use
15 with an absentee ballot, in your view, is a trustworthy record
16 that can be auditable?

17 A. Yes. As good as we can get.

18 Q. And have you ever voted on a BMD?

19 A. Yes.

20 Q. And what was the occasion for you voting on a BMD?

21 A. My application for the ballot was -- was not accepted. I
22 messed up something on it. So I didn't have time for the turn
23 around.

24 And so I just voted in person instead.

25 Q. And when you voted in person, was your right to privacy in

1 terms of your selections, was that respected?

2 **A.** No, it was not. There was a poll worker like right over
3 my shoulder. I assumed he was trying to help me. I had to
4 back him off.

5 **Q.** Could he see your -- did it look like he could see your
6 selections?

7 **A.** Yeah. He was -- he was a little past the barrier.

8 **Q.** If you had your druthers, would you prefer to vote in
9 person on election day or by absentee?

10 **A.** I would prefer to vote in person on election day with a
11 hand-marked paper ballot.

12 **Q.** And why is that?

13 **A.** Well, again, we would be creating a permanent record of my
14 vote.

15 **Q.** And what are the benefits of voting in person that you
16 give up voting absentee?

17 **A.** Well, the feeling of community, going down to the voting
18 and with the rest of my neighbors and people that we -- both my
19 wife and kids, sometimes we would all go together.

20 **Q.** Do you plan to vote in future elections?

21 **A.** Yes.

22 **Q.** And do you plan to vote absentee or in person?

23 **A.** I'm going to do absentee.

24 **Q.** As a named plaintiff, what is the relief that you seek in
25 this case?

1 **A.** I want to have the BMDs not be an option. I want
2 hand-marked paper ballots.

3 **Q.** And if that relief were granted, do you believe you would
4 be able to vote in person with all the benefits of voting in
5 person?

6 **A.** Yes.

7 MR. BROWN: No further questions.

8 CROSS-EXAMINATION

9 BY MR. PICO-PRATS:

10 **Q.** Good morning, Mr. Digges.

11 **A.** Good morning.

12 **Q.** Just starting where Mr. Brown started, you talked about
13 hand-marked paper ballots providing a permanent record; is that
14 correct?

15 **A.** Uh-huh (affirmative).

16 **Q.** Could you explain what a permanent record is to you.

17 **A.** Physical piece of paper.

18 **Q.** Okay. And you don't think that a BMD voting machine
19 ballot is a permanent record; is that correct?

20 **A.** That is correct.

21 **Q.** Are you presuming that when you send in a hand-marked
22 paper ballot through an absentee ballot through the mail, are
23 you presuming that someone doesn't intentionally or
24 unintentionally destroy that ballot?

25 **A.** I have no idea.

1 Q. And you're presuming that you can't audit a BMD system
2 ballot; is that correct?

3 A. Not effectively, no.

4 Q. Do you believe that risk-limiting audits exist in Georgia?

5 A. Say it again.

6 Q. Do you believe that risk-limiting audits are used in
7 Georgia?

8 A. Again, I don't ...

9 Q. Do you know what a risk-limiting audit is?

10 A. A risk-limiting audit?

11 Q. Yes, sir.

12 A. I know what an audit is.

13 Q. But not what a risk-limiting audit is?

14 A. No. Could you explain it to me.

15 THE COURT: You don't want to answer that, do you?
16 Why don't you move on.

17 MR. PICO-PRATS: I can move on.

18 THE WITNESS: I'm a quick learner.

19 BY MR. PICO-PRATS:

20 Q. Mr. Digges, you have frequently voted through absentee
21 ballot; is that right?

22 A. Correct.

23 Q. And that is through mailing it in; is that correct?

24 A. Well, we drop them off.

25 Q. Always drop them off?

1 **A.** (Witness nods head affirmatively.)

2 **Q.** Okay. And an absentee ballot is then scanned; is that
3 correct?

4 **A.** I assume so, yes. Yeah.

5 **Q.** Are you confident that your vote is counted when you vote
6 by absentee?

7 **A.** I'm confident there is a record of my vote.

8 **Q.** And it is that record, do you believe that it is your
9 exact intent of the people that you voted for, the candidates
10 that you voted for?

11 **A.** Well, yes.

12 THE COURT: When you say you are confident there is a
13 record, you mean what you brought in, the paper you brought in?

14 THE WITNESS: Yes. Correct. Yes.

15 BY MR. PICO-PRATS:

16 **Q.** And when you -- you have recently voted by a BMD machine;
17 is that correct?

18 **A.** Yes.

19 **Q.** And then you were not confident that there was a paper
20 record of that; is that correct?

21 **A.** That's correct.

22 **Q.** Sorry. You're not confident that it was a permanent
23 record?

24 **A.** Right.

25 **Q.** And do you have any evidence that your vote was not

1 counted when you voted by BMD?

2 **A.** No.

3 **Q.** And just to confirm, is it true that you're participating
4 in this lawsuit to move the current voting system from BMDs to
5 hand-marked paper ballots?

6 **A.** Say it again.

7 **Q.** Is it true that you're participating in this lawsuit to
8 move from the current -- to move Georgia from the current BMD
9 system to hand-marked paper ballots?

10 **A.** That is the -- yeah.

11 MR. PICO-PRATS: Those are all the questions I have.

12 THE WITNESS: Pardon?

13 MR. PICO-PRATS: That's all the questions I have.

14 Thank you, Mr. Digges.

15 MR. BROWN: No further questions.

16 THE COURT: May this witness be excused?

17 MR. BROWN: Yes, Your Honor.

18 MR. BEDARD: Your Honor, before the plaintiffs call
19 their next witness, we just conferred, it is about 10:45.

20 We're all --

21 THE COURT: We couldn't hear you.

22 MR. BEDARD: I'm sorry. I'll come up to the podium.

23 It is about 10:45. I just conferred with plaintiffs.
24 We're having some logistical issues with printing for the next
25 witness. If we can maybe take a ten-minute break at this

1 point. And if you want to continue, that is fine, I can work
2 on --

3 THE COURT: Well, you're not dealing with the
4 logistical issues. Somebody else is doing it for you, aren't
5 you?

6 MR. BEDARD: Yes, it is more a timing issue. They
7 should be able to figure it out.

8 THE COURT: Why don't we have plaintiff begin and
9 then either you --

10 **(Unintelligible cross-talk)**

11 MR. BEDARD: We take a break --

12 THE COURT: -- if you haven't completed the
13 logistical issues or not?

14 MR. BEDARD: Okay. Then we can take a break after.

15 MR. McGUIRE: We are getting -- we're going to call
16 Aileen Nakamura. And someone is getting her.

17 THE COURT: And what?

18 MR. McGUIRE: Someone is getting her right now.

19 THE COURT: All right. Thank you.

20 COURTROOM DEPUTY CLERK: Please raise your right
21 hand.

22 **(Witness sworn)**

23 COURTROOM DEPUTY CLERK: Please have a seat.

24 If you would state your name into the microphone and
25 spell your complete name for the record, please.

1 THE WITNESS: My name is Aileen Saya Nakamura,
2 A-I-L-E-E-N, S-A-Y-A, N-A-K-A-M-U-R-A.

3 Whereupon,

4 AILEEN SAYA NAKAMURA,
5 after having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. MCGUIRE:

8 Q. Good morning, Ms. Nakamura. My name is Robert McGuire.
9 I'm counsel -- one of the counsels for the Coalition for Good
10 Governance.

11 Ms. Nakamura, in what county do you live?

12 A. Fulton County.

13 Q. How long have you lived there?

14 A. 17 years.

15 Q. Are you a member of Plaintiff Coalition for Good
16 Governance?

17 A. Yes, I am.

18 Q. When did you become a member?

19 A. 18 -- in 2018.

20 Q. And have you also done volunteer work for CGG?

21 A. Yes, I have.

22 Q. I am going to call them CGG. Is that all right?

23 A. Yes.

24 Q. What is your educational background?

25 A. I have degrees in computer science and cognitive science

1 from Wellesley College.

2 THE COURT: Can you just speak a little louder?

3 THE WITNESS: Sure. I'm sorry. I'll get a little
4 closer.

5 THE COURT: Well, it can be closer but just broadcast
6 it a little more.

7 THE WITNESS: Yes, yes.

8 THE COURT: That's great. Thank you.

9 BY MR. MCGUIRE:

10 Q. I'm sorry. You said from Wellesley?

11 A. From Wellesley College, yes.

12 Q. Are you currently registered to vote in Fulton County?

13 A. Yes, I am.

14 Q. How long have you been registered to vote there?

15 A. 17 years.

16 Q. How regularly do you vote?

17 A. I try to vote in every election.

18 Q. Do you plan to vote in any elections coming up in 2024?

19 A. Yes. All of them.

20 Q. What voting method do you intend to use in 2024?

21 A. I prefer to vote in person at the polling place. But
22 because I want to use a hand-marked paper ballot, I will try to
23 vote using absentee by mail ballot.

24 Q. And why do you intend to vote absentee by mail instead of
25 using -- instead of going to a polling place?

1 **A.** From my experience of observing and from my personal
2 experience, I feel that there are many issues with voting on a
3 BMD.

4 **Q.** Such as?

5 **A.** Well, first, the lack of voting secrecy.

6 Second, when you vote on a BMD, you have -- the printout
7 has a QR code. And if you can't read the QR code, you aren't
8 sure how your vote is actually going to be counted.

9 Third, with a BMD, you actually have to check your -- that
10 your vote is correct twice, once on the BMD itself, you have to
11 make sure that all of the selections that you made are correct
12 and that the computer registered it correctly. And then the
13 second time you have to look at the printout and verify that
14 your votes are on the printout correctly as well. But to do
15 that you have to memorize the entire ballot.

16 Oh. Actually, I just thought of something else.

17 The other issue I have is there is a problem with -- if I
18 was in a situation where I went to vote, I pushed all the right
19 buttons, I know that I made the right selections, but somehow
20 the computer -- if I push George Washington and the computer
21 says Abraham Lincoln, I go and complain to the poll manager.
22 The poll manager then knows how I am voting, so there is my
23 ballot secrecy issue. They will probably do something about
24 that computer. So that is not that bad of an issue. Right.
25 The computer goes out of commission.

1 But if the printout comes out saying Abraham Lincoln and I
2 know that I pushed George Washington, then I have to spoil that
3 ballot and revote. But when I complain to the poll manager
4 that something happened and my vote did not come out correctly,
5 the poll manager is automatically -- just because of human
6 nature, I think the poll manager will assume it is voter error
7 and not an error that the machine or the printout -- or printer
8 made.

9 **Q.** Now, in spite of those problems, have you ever voted in
10 person using a BMD in the past?

11 **A.** I have. When I had issues getting an absentee ballot.

12 **Q.** And is that the reason why?

13 **A.** Yes.

14 **Q.** What kind of problems did you have getting your absentee
15 ballot?

16 **A.** In 2020 for the presidential primary, my oldest child and
17 I never received our absentee ballot. So we had to vote in
18 person. And then for the runoff, my husband, my child, and I,
19 all of us never received our ballots even though I called
20 Fulton County asking if it was issued and they promised that
21 all three of them had been issued.

22 My husband's actually came four days after the election.
23 But my daughter's and mine did not.

24 **Q.** Now, how did your experience of voting on a ballot-marking
25 device, or a BMD, compare to voting absentee?

1 **A.** When I was voting in the polling place, because of the
2 lack of secrecy, I was so nervous that I almost forgot to check
3 my printout.

4 Trying to get an absentee ballot by mail is also extremely
5 inconvenient, especially for people like my children who don't
6 have their own printers. And I no longer trust the U.S. mail.
7 So I have gotten to where I personally drive all of our
8 family's ballots, including my mother's, to either a drop box
9 or to an elections office.

10 But I also feel that using the hand-marked paper ballot
11 gives me the privacy that I want. And also I know that my
12 vote -- I know how my vote will be counted.

13 **Q.** Now, just as a general matter, what significance does
14 exercising the right to vote have for you personally?

15 **A.** I'm extremely passionate about voting because my father,
16 he fought in World War II to preserve our democracy. But my
17 family also has a history where we know firsthand what the
18 consequences of not having our constitutional rights respected.

19 My dad was born in the U.S. And he was a U.S. citizen.
20 But when he was 18, his entire family was incarcerated. And
21 their rights were taken away from them. For no reason. Just
22 for looking like the enemy. They were never charged with
23 anything. They were locked up for years. And, you know, their
24 right to vote was taken away. And so I take that very
25 seriously.

1 And I also understand how important it is to preserve your
2 constitutional rights. You know, it was the Government and
3 even the Supreme Court that ignored those rights that they had
4 as U.S. citizens. So that is why I'm so passionate about
5 voting.

6 **Q.** Now, you mentioned secrecy, a lack of secrecy on the BMDs.
7 When you exercise the right to vote, why is secrecy in voting
8 important to you personally?

9 **A.** Well, I'm barely over five-foot tall. So in Fulton County
10 with the very big upright machines, everybody can see how I'm
11 voting. And, you know, an absolute secret ballot is protected
12 under Georgia Constitution. So I expect that to be the case.

13 And the other part of my worries is that I live in a very
14 politically divided neighborhood. So when we -- in 2008, when
15 we put out a political yard sign, that night our mailbox got
16 bashed in.

17 Especially now with the, you know, current climate that we
18 have politically and the hate crimes that I have seen against
19 Asian people, and especially Asian women, I feel that if I go
20 and vote in person and I am displaying how I am voting, I could
21 be at a lot of risk.

22 And I don't feel that voting in America should come
23 with -- should carry any risks.

24 **Q.** When your mailbox got bashed in, why did you think it was
25 related to the yard sign?

1 **A.** Because it was the night that the yard sign got put up.
2 We were actually one of the first families to put up any yard
3 signs and that was -- that was an immediate thing.

4 **Q.** Is your assumption that whoever did that might vote in
5 your polling place?

6 **A.** I would assume that they are a neighbor and -- yes, I
7 would assume that.

8 **Q.** You also mentioned the QR code on a BMD printed ballot.
9 Why does it matter to you that you can't read the QR code
10 on your BMD ballot?

11 **A.** Because it is the QR code that is actually tallied to
12 count my votes. And if I can't read it, then I have no idea
13 what is actually being counted.

14 Because I have a background in computer science, I do know
15 that computers are hackable and --

16 MR. BEDARD: Objection, Your Honor, just on the basis
17 of, you know, this is unfounded opinion testimony. She's a lay
18 witness. I understand that she is not a designated expert --

19 THE COURT: Well, she's --

20 MR. BEDARD: -- but this is a technical opinion under
21 26(a) --

22 THE COURT: It is not. She's saying in her capacity
23 as a -- in computer science that she knows this can happen.
24 Daily we know this as human beings here. She's not going into
25 anything deeper, and I assume she won't go into anything

1 deeper.

2 MR. BEDARD: Thank you, Your Honor.

3 THE WITNESS: May I continue?

4 BY MR. MCGUIRE:

5 Q. Please.

6 A. And I think the other thing is that from my experience
7 programming, I know that programmers make errors all the time.
8 And we have seen in Georgia many cases where, you know, the BMD
9 was or -- yeah, the ballot was programmed incorrectly and so
10 the wrong results came out.

11 We have seen very recently in Northampton, Pennsylvania,
12 where the printout -- the text was incorrect, and so people --

13 MR. BEDARD: Objection, Your Honor. Lack of
14 foundation as to when it comes to Pennsylvania. She is not
15 there personally. She can't testify as to facts of what
16 happened in Pennsylvania.

17 THE COURT: All right.

18 MR. MCGUIRE: I think she's addressing the reason for
19 her concern and if it is based on something she's heard that
20 is -- that is explaining her understanding.

21 THE COURT: All right. I'll accept it only for that
22 purpose, that this is the reason for her concern, not that she
23 has any particular expertise as to what happened in
24 Pennsylvania or specific personal knowledge other than what
25 she's read.

1 MR. BEDARD: Thank you.

2 MR. MCGUIRE: Thank you, Your Honor.

3 BY MR. MCGUIRE:

4 Q. Ms. Nakamura, you also mentioned the difficulty of
5 memorizing the ballot's content on a BMD ballot?

6 A. Yes.

7 Q. Why would you need to do that to vote on a BMD?

8 A. So after you finish checking your ballot on the BMD and
9 you have done the, you know, going back and forth and making
10 sure that all the buttons were correct and it registered
11 correctly, when you push print, the BMD goes blank. Nothing is
12 there.

13 So when the printout comes out, you then have to -- you
14 have nothing to compare it against. And you have to have
15 memorized the entire content and remember how many races there
16 were, see if there is any races missing. I know that I could
17 never catch that. I just am not that sharp.

18 So what I have resorted to is to bring a cheat sheet along
19 with me. I will print out a sample ballot at home and I'll
20 mark all my choices, and then I'll use that to mark -- make my
21 choices on the BMD and look at the printout.

22 That works well for me. But I have never seen -- I have
23 never observed anybody else doing that at a polling place.

24 Q. And how long is your typical ballot there in Fulton
25 County?

1 **A.** The last presidential election I had 48 races -- 48
2 contests.

3 **Q.** So for elections coming up in 2024, will you again vote by
4 BMD if you have difficulty getting an absentee ballot?

5 **A.** I'll be very reluctant to, but I will, yes.

6 **Q.** You mentioned earlier that you were a member of and a
7 volunteer for the Plaintiff Coalition for Good Governance.

8 **A.** Yes.

9 **Q.** Are you also an officer of CGG?

10 **A.** Yes, I'm the assistant secretary.

11 **Q.** And how many hours would you say you've spent working for
12 CGG as a volunteer or as an officer?

13 **A.** I think I average something like 80 hours a month. So
14 since 2018, easily over a thousand hours.

15 **Q.** And what sorts of projects have you worked on for CGG?

16 **A.** I believe the first project I worked on was creating and
17 getting people to sign a petition to the Secretary of State.

18 And then from there I have recruited and trained and
19 organized poll watchers to go and observe elections.

20 I have also created and managed surveys for voters so that
21 we can see what kind of problems/issues are coming up during
22 elections.

23 I've helped with voter education, with election
24 official -- yes, election official education, webinars, that
25 kind of thing. I'm trying to remember.

1 I have also helped partner organizations, Scrutineers, who
2 is trying to come up with a macro -- actually they have -- for
3 determining real time as election results come in in Georgia.
4 If there are any anomalies, that will alert us to possible
5 problems going on with the tallying or, you know, something
6 that may be missing somewhere, that sort of thing.

7 **Q.** Okay. I want to hone in and ask you about the observation
8 stuff.

9 **A.** Sure.

10 **Q.** You mentioned that you had trained volunteers.

11 Have you observed elections yourself?

12 **A.** Yes, I have.

13 **Q.** When you personally have observed elections, have you just
14 observed the actual voting?

15 **A.** No. I have -- I believe I have observed the entire voting
16 elections process. So starting with logic and accuracy testing
17 to the actual voting, to the tallying of absentee by mail
18 ballots. And also the tallying of memory cards as they come in
19 from different precincts to the county office.

20 And then post election, I have also observed re-counts.

21 **Q.** And as far as the volunteers that you have trained, have
22 you managed their work?

23 **A.** Yes. Yes.

24 **Q.** Okay. And what has that entailed?

25 **A.** So, for instance, in 2019, when there were the pilot

1 elections for using the BMDs for the first time and also there
2 was a hand-marked paper ballot election going on in Cobb
3 County, I organized -- I recruited and organized about 30
4 volunteers, and they went out to about 50 polling places in six
5 counties. And I sort of managed all of that.

6 **Q.** Were you just sending them out or were you in any way
7 managing what they did with what they saw?

8 **A.** So I created worksheets or I don't know what you would
9 call them, checklists, so that they would all be sort of
10 looking for the same things.

11 And they -- they had questions for them to answer, what to
12 look for, you know, those kinds of things.

13 **Q.** And have you continued to manage volunteers observing
14 elections after the pilot elections you talked about?

15 **A.** So in a much smaller scale because 2020, you know, COVID
16 happened and so a lot of people didn't want to go out and be in
17 public anymore. And then when SB 202 got passed, it became a
18 felony to see how somebody was voting.

19 And because the BMDs are so visible, there have been many
20 times when I walk into a polling place and I can see how
21 somebody is voting. I couldn't put -- I couldn't ask people to
22 go out and poll watch if that was a risk, that they were going
23 to be charged with a felony for inadvertently looking at
24 somebody's ballot, because you can't argue against somebody
25 saying, hey, you looked at my ballot on purpose. How do you

1 defend yourself?

2 So I stopped asking people, and it is really just a very
3 small group of CGG volunteers who are willing to go out and do
4 observations.

5 **Q.** So not the massive effort it started as?

6 **A.** No.

7 **Q.** Okay. So when you trained those observers initially
8 beginning in 2019 --

9 **A.** Yes.

10 **Q.** -- how were they trained to know what to watch for?

11 **A.** So this was pre-Zoom. So we basically did everything by
12 email. I sent out lots of emails with what we were looking
13 for, you know, how to talk to the poll managers to let them
14 know that this is a right in Georgia, that public observation
15 is a right and -- yeah. That is how we did it.

16 **Q.** And what sorts of things did you instruct your volunteers
17 to look for when they were observing elections?

18 **A.** So a lot of it was the mechanics of voting, how are the
19 BMDs -- how are voters, first of all, acting with the BMDs, the
20 Poll Pads, the scanners? How are the machines themselves
21 acting? Are there issues using them? How long is it taking to
22 vote? How visible is everything? Is there ballot secrecy?

23 And I ask the poll watchers to then write reports and also
24 draw diagrams of the polling places so that we could see what
25 sorts of issues were coming up.

1 Q. What happened to all that information after the day of the
2 election?

3 A. They would email them to me and then I would read through
4 them so that we had an idea of what kinds of issues were coming
5 up.

6 Q. So what is your degree of familiarity with the
7 observations made by this large number of people?

8 A. I would say quite familiar.

9 Q. You recall that this Court -- I think you mentioned it
10 earlier -- issued an order in 2019 that enjoined the DREs?

11 A. Yes.

12 Q. And do you recall that that order said something about
13 pilot elections?

14 A. Yes. Yes.

15 Q. Are those the elections that you had observed with your
16 large team of volunteers?

17 A. Exactly.

18 Q. Okay. I think you mentioned -- well, maybe you can remind
19 us what elections you observed, what pilot elections you and
20 your team observed in 2019.

21 A. So there were six counties that were piloting the use of
22 the BMD system. And we had observers going out to Carroll,
23 Bartow, Catoosa, Lowndes, and Paulding Counties. And also
24 volunteers going to watch the hand-marked paper ballot pilot in
25 Cobb County.

1 Q. And so Cobb, you just said, was a hand-marked paper ballot
2 election.

3 Were the rest BMD elections?

4 A. Yes, they were.

5 (Reporter clarification)

6 BY MR. MCGUIRE:

7 Q. So you mentioned Cobb County was a hand-marked paper
8 ballot election?

9 A. Yes.

10 Q. Were the rest BMD elections?

11 A. Yes, they were.

12 Q. So talking about those -- and you're familiar with the
13 observations that were made by yourself and your volunteers at
14 those pilot elections?

15 A. Yes.

16 Q. So talking about those pilot elections specifically, what
17 differences did you and your team observe in how the two
18 different kinds of elections ran?

19 MR. BEDARD: Objection, Your Honor, on hearsay
20 grounds. Ms. Nakamura can testify to what she saw in that
21 election. She cannot testify to what her observers saw and
22 told her.

23 So if the question can be limited to what she saw,
24 that is fine. But if he is asking her about what her observers
25 saw during the election, that is the very definition of an

1 out-of-court statement made to her for the truth of the matter
2 asserted about what they saw.

3 MR. McGUIRE: May I respond?

4 She's testified that she's an officer of the
5 organization and that this was an initiative of the
6 organization. And this was activity that was conducted by
7 volunteers working for the organization in the course of it
8 pursuing its goals.

9 She testified to the system that they observed and
10 that it was a formalized system that involved reporting, so
11 essentially these are -- she's testifying to the content of
12 what are functionally business records.

13 MR. BEDARD: Your Honor, these aren't business
14 records kept in the regular course. It is not like, you know,
15 accounting records or something like that. He doesn't have any
16 actual document that he is putting up, you know, for a record.
17 I don't see how this is a business record. It is literally
18 statements people are making to her.

19 THE COURT: Are you seeking to introduce a set of
20 records or not?

21 MR. McGUIRE: I'm just seeking to introduce her
22 summary of what the records contained.

23 THE COURT: Well, I think what she can do is this:
24 She observed herself. And as I understood her testimony was
25 that she also seems -- I don't know.

1 Did you visit with some of the other -- go to the
2 polls where some of your observers were working or not?

3 THE WITNESS: I didn't -- some of the polling places
4 there was some overlapping. But most of them, because we
5 covered 50 polling places with 30 people, it was a -- you know,
6 I just made sure that we covered the polling places. And there
7 wasn't much overlap.

8 THE COURT: All right. Well, why don't you, first of
9 all, describe what your perceptions were, and then I'm going to
10 rule from what -- we'll wait and I'll give you directions from
11 there.

12 And you said -- I mean, in 2019 was the -- when we
13 had the trial of the BMD -- of the hand-marked paper ballot in
14 Cobb. But the other -- they were not using -- there was a
15 reference to using BMDs. I think the BMDs were not in use. It
16 was -- in those it was still the DRE system there.

17 MR. McGUIRE: I believe these were --

18 THE WITNESS: These were the -- this was the first
19 time the BMDs were being tried.

20 THE COURT: Tried, right. I just wanted to be sure
21 that is where they were.

22 Okay. Fine. Would you step down.

23 MR. BEDARD: Yes.

24 THE COURT: Just start with you, and then we'll go
25 from there, what you observed.

1 THE WITNESS: So for the BMD pilots, I observed in
2 Paulding County and also in Bartow County. And what I observed
3 was that the machines were difficult, very difficult for the
4 poll workers to get used to and also the voters.

5 And I heard more than once voters coming in and being
6 shocked at how big the machines were. There was a wife who
7 said to me, because I was standing right next to her, I can't
8 believe I can see how he is voting.

9 The Poll Pads were difficult for the poll workers to
10 get used to and there seems to be -- there seemed to be a lot
11 of --

12 THE COURT: Used for check in, is that what you
13 are --

14 THE WITNESS: I'm sorry?

15 THE COURT: You are talking about the Poll Pads --

16 THE WITNESS: The Poll Pads for check in. Yes.

17 The Poll Pads aren't only used for check in. They
18 are all also used to give voters the green smart cards which is
19 what has the information on their ballot on it.

20 Voters have to put that green smart card into the
21 BMD. And so getting the smart cards coded right seemed to take
22 a lot of time.

23 What I noticed, when I watched in Cobb, was that the
24 check-in process was very smooth because they just had to be
25 given a ballot as opposed to getting this card encoded and then

1 going to the machine -- you know, at the time nobody had used
2 the BMD, so a lot of people couldn't even figure out where to
3 put the smart card, which happened to me when I first voted on
4 a BMD.

5 And then, you know, just using the BMD itself, I saw
6 many, many poll workers trying to explain to voters how to vote
7 without looking at the ballot. So it was kind of one of these,
8 you know, okay, so do this and then do this, which was a little
9 bit comical.

10 And then --

11 THE COURT: They were trying not to look but their
12 hands were out?

13 THE WITNESS: Yes, they are trying to give
14 instruction but not -- trying not to look at the -- what they
15 are pushing.

16 And the printout themselves, when they came out, I
17 noted that most people did not even look at the printouts.
18 Whereas, when I went to Cobb -- so in my own experience what I
19 saw in Paulding and in Bartow was pretty chaotic.

20 BY MR. MCGUIRE:

21 **Q.** That was the BMD?

22 **A.** That was the BMD.

23 I won't -- I mean, the scanners had their own issues. But
24 the scanners were also being used for the hand-marked paper
25 ballot election. So, you know, again first time the scanners

1 were being used. Many of them just were very -- they just kept
2 kicking out the ballots. And so that was something that people
3 had to get used to.

4 But for the rest of the election in Cobb County, it was so
5 smooth that --

6 THE COURT: This was the hand-marked paper ballots?

7 THE WITNESS: This was the hand-marked paper ballots.
8 People would check in. They would get their ballot. They
9 would go to a booth. They would fill in the ovals. Take a
10 second to, you know, check to make sure it was right. Go to
11 the scanner and it was very simple.

12 BY MR. MCGUIRE:

13 Q. Okay.

14 THE COURT: Now, without reporting what -- individual
15 remarks of some of your observers, let me ask you this: You
16 reviewed all of their feedback?

17 THE WITNESS: Yes, I did.

18 THE COURT: And did you have forms that you were
19 looking at that they had completed or were they oral --

20 THE WITNESS: Yes. Some of them preferred to just do
21 longhand reports. Some of them used my checklist. So there
22 were different types.

23 THE COURT: Without going into the details of any of
24 those that we don't have before us --

25 THE WITNESS: Yes.

1 THE COURT: -- were there any general themes that
2 they were describing that were consistent or wholly
3 inconsistent with what you --

4 (Unintelligible cross-talk)

5 THE WITNESS: I --

6 THE COURT: -- just reported that you viewed in
7 your -- because you went to the two locations where there were
8 BMDs in trial?

9 THE WITNESS: I think in general I can say that
10 everybody who went to, you know, the other counties from --
11 that were different from me, all --

12 THE COURT: None of those were using the --

13 THE WITNESS: They were all using BMD.

14 THE COURT: All right. Go ahead.

15 THE WITNESS: So the BMD locations all had the same
16 sort of experience that I did. Some of them -- you know, many
17 of them were machine issues where machines weren't working
18 right or they, you know, couldn't get them even up and running
19 in some cases. A lot of machine issues.

20 And then the other people who watched the hand-marked
21 paper ballots also mentioned how smooth everything was, other
22 than the scanners which had problems.

23 THE COURT: For everybody?

24 THE WITNESS: For everybody, all around, yes.

25

1 BY MR. MCGUIRE:

2 Q. Thank you. Now, those --

3 MR. BEDARD: Sorry, Robert.

4 Just for the record, and I don't understand what Your
5 Honor's ruling is yet, but we would just reiterate again the --

6 THE COURT: I partially sustained your objection. I
7 think I cured it by the way I asked the question so that we
8 were not -- she wasn't reporting on individual -- what
9 individuals had specifically reported to her but what the
10 themes were.

11 MR. BEDARD: Understand, Your Honor.

12 I just want to reiterate for our record we still
13 lodge a hearsay objection. I understand your ruling.

14 THE COURT: All right. Well, I think that in her
15 capacity as an -- overseeing this whole project, that she could
16 properly testify as to that without getting into the genuine
17 hearsay problems.

18 And once again, I will say, this is a bench trial.
19 And to the extent there really is an issue on something that
20 she went too far on, I will note that accordingly.

21 MR. BEDARD: Understand, Your Honor.

22 And actually maybe this will make things go smoother
23 for the rest of this cross. I understand if you want to
24 reserve hearsay objections and make decisions later. Just for
25 our purposes for the record if we could stand up and make our

1 objections.

2 THE COURT: I realize that, but it is not that I'm
3 going to in any order later on start giving by page by page
4 hearsay rulings. So unless something is very unusual, I'm
5 going to be making the ruling now and I will address it now.

6 MR. BEDARD: Understood.

7 Thank you, Your Honor.

8 BY MR. MCGUIRE:

9 Q. So just to summarize your testimony, is it fair to say
10 that for the pilots your understanding was that the hand-marked
11 paper ballot pilot went smoother?

12 A. Yes. Not just smoother, but voting for the voters in Cobb
13 County was way faster. Like by many degrees.

14 Q. Now, these pilots were in 2019, so a bit over four years
15 ago or maybe just a bit under four years ago.

16 You would expect officials to get better at running
17 elections with the new BMD system over time, would you not?

18 A. Yes.

19 Q. And how many other elections have you observed since the
20 2019 pilots that were conducted on BMDs?

21 A. There are elections every year in Georgia. So I really
22 don't have a number. Because I have observed every major
23 election and a lot of minor ones, so we're talking about
24 municipal elections, special elections, you know, runoffs in
25 some cases. I never kept count.

1 Q. Could you give a time estimate about how many hours you
2 have spent watching BMD elections?

3 A. I would say between 150 and 200 hours.

4 Q. And have your observations of BMD elections, your personal
5 observations of BMD elections since the 2019 pilots, have they
6 borne out your expectation that more recent BMD elections would
7 go better?

8 MR. BEDARD: I'll just lodge an objection, Your
9 Honor, again to inappropriate lay witness opinion testimony. I
10 do think it is based on expertise. And to the extent that it
11 is solely about her personal opinion, I would lodge an
12 objection to relevance.

13 MR. McGUIRE: My response --

14 THE COURT: I mean, but, Counsel, you-all have been
15 asking the plaintiffs their opinions left, right, and center.

16 MR. BEDARD: Well, respectfully, Your Honor, she is
17 not a plaintiff, she is a member of the organization.

18 THE COURT: There were people who were not plaintiffs
19 who were just members of the organization you're asking that.
20 It's all right. I'm sorry. I shouldn't have barked at you
21 about that. But it just seemed to me that we wasted a lot of
22 time because you were asking before -- not you individually but
23 there were a lot of questions about your opinion about this or
24 opinion about that, and I just was giving you a lot of
25 latitude. So anyway ...

1 MR. BEDARD: And I'll try and keep my objections
2 short, Your Honor. It is just a matter of marking it on the
3 record. Thank you.

4 THE COURT: Okay. So going back to what your
5 question was --

6 MR. MCGUIRE: Shall I repeat it or are you --

7 THE COURT: Why don't you go ahead and repeat it.

8 BY MR. MCGUIRE:

9 Q. Ms. Nakamura, have your observations, your personal
10 observations, of BMD elections since the 2019 pilots borne out
11 your expectation that more recent BMD elections would go
12 better?

13 A. Not exactly. I would say that voters have definitely
14 gotten used to using BMDs much more. The problem with computer
15 systems of any kind is -- just because of my computer
16 background. There is always new things that come up.

17 So, for instance, during this last municipal election,
18 this was the first time that the GARViS system, the new voter
19 registration system, was rolled out across Georgia.

20 And so just like we saw with the new Poll Pads in 2019,
21 there were -- there were numerous issues that I saw where
22 voters weren't in the system and they had to be turned away.
23 The smart cards weren't being -- they couldn't get the smart
24 cards to be programmed correctly.

25 I'm trying to think of what else.

1 The time it takes for the check-in process has gotten
2 shorter because of the new GARViS system. But from what I
3 observed in Fulton County where they had to do two re-counts,
4 not just one but two re-counts because the GARViS system had --
5 you would have to ask, actually, the Fulton County registration
6 office what the exact problem was.

7 But I was there at both re-counts. They said that the
8 reason why they couldn't be sure of the tally was because the
9 system was wrong.

10 MR. BEDARD: Objection, Your Honor. Move to strike
11 that as hearsay.

12 THE COURT: I think it is hearsay, and I strike it,
13 but I think you're allowed to say -- was it -- to your
14 knowledge, did they do two re-counts?

15 THE WITNESS: Yes. And I was there for both.

16 THE COURT: And, to your knowledge, was it concerning
17 the GARViS system?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. MCGUIRE:

21 **Q.** So, I mean, if you had to just give us a brief sort of
22 recap, what problems, if any, with Georgia's BMD elections
23 would you say have not improved since the 2019 pilots?

24 **A.** Definitely the ballot secrecy issue. Actually, I think
25 that has gotten worse because in counties like Cobb, Cobb

1 actually was not bad. They had a way of putting these screens
2 up that were pretty hard for people when they are walking into
3 the polling place to see how somebody is voting.

4 DeKalb was the same. But now because the machines are so
5 big and cumbersome to move around, both Cobb County and DeKalb
6 County have started using the carriers that Fulton County uses,
7 which is the big carriers where you can have either four BMDs
8 attached in -- within one carrier or there is another one that
9 has two BMDs plus a printer.

10 THE COURT: Are they all facing each other or are
11 they --

12 THE WITNESS: So the ones that have four are -- there
13 is one -- there is one on each -- it is like a box.

14 THE COURT: A box.

15 THE WITNESS: And so there is one on each end. And
16 there is -- because -- and that is what I have to vote on. And
17 because of the height of them, they are just within plain view
18 of eyesight.

19 Cobb and DeKalb have gone to that system and so now
20 everything is so much more visible and that is way worse.

21 I'm sorry, I can't remember the actual question now.

22 BY MR. MCGUIRE:

23 **Q.** Just if there were any other aspects that have not
24 improved since 2019 --

25 **A.** I would say that the BMD use, even though people are more

1 used to it, the fact that people are not looking at their
2 printouts. I mean, ever since 2019 it has been the same.

3 **Q.** And on that subject, based on your personal observations
4 of BMD elections, how common is it for voters to attempt to
5 check the accuracy of their BMD ballot printouts?

6 **A.** It is not common at all. I have seen people checking
7 their BMD ballot, you know. I do see a lot of this sort of
8 going back and forth and making sure that the selections are
9 correct.

10 **Q.** You mean on the touch screen?

11 **A.** On the touch screen, I'm sorry, yes.

12 **Q.** But as far as paper printout from the BMD, what is the
13 practice that you see?

14 **A.** I have seen parents who bring their children along. You
15 know, as soon as the printout comes out, they give it to their
16 child to carry. I have seen people who probably have eyesight
17 issues sort of squinting and then giving up.

18 And that is -- I mean, the person who tries to look is
19 actually quite the exception. I think the University of
20 Georgia's study that they did in 2020 that showed that only
21 19 percent of voters looked at their ballot for more than five
22 seconds, I think 19 percent is actually on the high side. I
23 haven't seen that many people look at their ballots for that
24 long. And especially on a ballot that is 48 contests long,
25 five seconds is nothing.

1 MR. BEDARD: Your Honor, I'll just, again for the
2 record, move to strike as far as the Georgia study goes. It is
3 an out-of-court statement again admitted for the truth of it.
4 If she's just talking about her own conclusions, it is fine.
5 But we just can't admit it for the truth of it right now.

6 THE COURT: All right. I overrule your objection.
7 But I mark it. And I don't have the study in front of me. She
8 noted it as a basis of her opinion. It is in for whatever it
9 is worth, her reference to it.

10 BY MR. MCGUIRE:

11 Q. So don't poll workers remind voters to check their BMD
12 printed ballot?

13 A. I think they are told that they are supposed to. But in
14 the vast majority of cases, I have not seen poll workers asking
15 voters if they have checked their ballots.

16 There are some polling places where it happens
17 consistently. And that is the -- you know, that is a rare
18 case.

19 What I have observed is even if I have seen that somebody
20 picked up their printout, their printed ballot, did not look at
21 it, they get to the scanner and then they are asked, have you
22 checked your ballot? They say yes, because -- and the only
23 reason that I can figure out is because they think checking
24 their ballot means checking on the BMD itself, on the touch
25 screen.

1 Much like, you know, if you write a report on a computer,
2 you do it, and then I check everything on the screen. When it
3 prints out, I don't think I need to look at the printout. So I
4 think that is why people say yes, even if they haven't looked
5 at it.

6 MR. BEDARD: Objection. Just calls for speculation
7 to what was in the mind of those people and what they did or
8 didn't do.

9 THE COURT: Well, it is lay opinion.

10 Thank you.

11 BY MR. MCGUIRE:

12 **Q.** Since 2019, have you also observed elections in Georgia
13 that are conducted without using BMDs as the standard in-person
14 voting method?

15 **A.** Yes, I have.

16 **Q.** What elections have you observed that are like that?

17 **A.** Municipal elections.

18 **Q.** Okay. And have you observed in-person voting at municipal
19 elections both early and on election day?

20 **A.** Yes, I have.

21 **Q.** How common are elections conducted without using BMDs in
22 Georgia?

23 **A.** They happen every two years during municipal elections.

24 **Q.** How many -- how many municipal elections have you
25 observed?

1 **A.** I would say that in the -- so let's say in 2023, we just
2 had municipal elections.

3 In Georgia, what a lot of people don't understand is that
4 the 535 municipalities can do their own elections any way they
5 want. By law they are allowed to.

6 And so in this last 2023 cycle, there were 285
7 municipalities that had their own -- that had elections. And I
8 wasn't able to find out exactly how many ran their own
9 elections because the Secretary of State doesn't keep those
10 records.

11 So I was able to find out that 47 of them definitely ran
12 their own elections. This is not having their county run their
13 elections for them.

14 And the biggest of those counties, which is Gwinnett
15 County, the second largest county in Georgia -- for Gwinnett,
16 all 16 of their municipalities run their own elections using
17 hand-marked paper ballots. 11 of them had the -- had municipal
18 elections this year -- I'm sorry, this past year in 2023. And
19 I visited seven of those locations.

20 I also asked Jeanne Dufort to go to Snellville so that
21 between the two of us we covered the eight largest
22 municipalities in Gwinnett.

23 **Q.** And about how big were those big municipal elections that
24 you and Jeanne Dufort observed?

25 **A.** So the largest would be Peachtree Corners, which is the

1 largest municipality in Gwinnett, that has a population of
2 about 42,000 people, which is actually larger than 110 Georgia
3 counties.

4 I also -- I forgot to mention that I also observed the --
5 the first time that the city of Milton in Fulton County ran
6 their own elections using hand-marked paper ballots. They just
7 did this. And Milton is about the same size as Peachtree
8 Corners. It is about 41,000 people.

9 **Q.** And so in these elections, how do voters -- these
10 municipal elections that are not run using BMDs, how do voters
11 record their votes in those elections?

12 **A.** So after they check in and they -- you know, it is
13 verified that they are a citizen and they belong to that
14 polling place, they are given a ballot and they just have to
15 take it to a booth and either stand up or sit down and fill in
16 the ovals. They check it. And then they take it to a scanner.
17 That is it.

18 **Q.** And when you say they take it to a scanner, is that, what
19 is that part of the process?

20 **A.** Actually, I should rephrase. They either take it to a
21 scanner, if the municipality is using a scanner to do the
22 tallying. Or some municipalities, especially if they are on
23 the small side, they just drop it in a ballot box and then the
24 ballots get counted by hand later.

25 So I'm sorry. Can you go back to your question?

1 Q. Well, so for these -- let's focus on these big
2 jurisdictions you mentioned --

3 A. Yes, with the scanners.

4 Q. -- Peachtree Corners and Milton. Those are big places.
5 What do the voters do with their paper ballots in
6 Peachtree Corners and Milton once they are done filling them
7 out?

8 A. So actually Milton did hand-marked paper ballots, and they
9 hand counted. But in the large municipalities in Gwinnett, so
10 that would be Peachtree Corners, Sugar Hill, Duluth, they then
11 take it to the scanner and the scanner -- after they take it to
12 the scanner, it is exactly the same as a BMD system. The
13 scanner will -- you know, the ballot goes into the scanner and
14 it is -- and it just rests in there.

15 Q. And are those scanners, are they tabulators like BMD
16 ballots?

17 A. Yes. They are the exact same scanners that are used in
18 the old Dominion system. By law, municipalities are allowed to
19 borrow equipment for free from the counties if they want to run
20 their own elections.

21 So those scanners were all borrowed -- you know, the
22 Gwinnett ones were borrowed from Gwinnett County.

23 Q. So they are using the same scanners that Gwinnett uses to
24 conduct BMD elections?

25 A. Correct.

1 In the case of Milton, they didn't use scanners but they
2 did borrow Poll Pads from Fulton County.

3 **Q.** To your knowledge, when they borrow those scanners, is
4 there any sort of change of the software that is required to
5 allow them to work with hand-marked paper ballots in the
6 polling place?

7 **A.** No. In fact -- I mean, when you think about it, I'm sure
8 there has been testimony about, you know, the hand-marked paper
9 ballots are currently the emergency option for if the machines
10 are not working. So the scanners are already programmed to be
11 able to read a hand-marked paper ballot as opposed to a BMD
12 printed ballot.

13 **Q.** And I think you said something earlier about municipal
14 elections either being run by the municipality or by the
15 county.

16 **A.** Yes.

17 **Q.** Can you explain the difference between those two options?

18 **A.** So let's talk about Fulton because that is where I live.

19 In Fulton County, the municipalities have the option of
20 paying Fulton County to run their elections. I think one of
21 the reasons why Milton decided to do their own thing this year
22 is that the cost for counties to run the elections went up
23 astronomically.

24 It used to be something like -- and the way Fulton does
25 it, they charge per registered voter instead of per the number

1 of voters who actually vote in a municipal election. And so
2 the cost went from something in the neighborhood of \$2 per
3 registered voter up to \$9, you know, somewhere in the
4 neighborhood of \$9 per registered voter.

5 So it has become much more expensive since the advent of
6 the BMDs.

7 **Q.** And so -- and that is -- what effect does that have on who
8 runs the election?

9 **A.** I think for the smaller counties, they really are cash
10 strapped and they -- they decide that it is a lot easier to
11 just run their own elections using hand-marked paper ballots.
12 And they can borrow the scanners for free if they, you know,
13 prefer to use that.

14 **Q.** What is your understanding of how much cybersecurity
15 training election officials in municipalities are generally
16 required to have?

17 **A.** I have asked the superintendents of municipal elections
18 who are usually the city clerks what level of -- you know, if
19 they were required to do cybersecurity training and the answer
20 is no.

21 **Q.** What is your understanding of how the requirements -- you
22 know, what requirements apply to testing of equipment when it
23 is transferred from counties to municipalities and then back
24 again?

25 **A.** My understanding is there is no requirement. There is

1 nothing in the law or any SEB rules about the testing of
2 equipment that has been borrowed by a municipality and then
3 returned.

4 Like, you know, Gwinnett County doesn't have the test -- a
5 machine or a scanner once it has been returned to them.

6 **Q.** So if the municipality is going to run its own election
7 with county equipment, is the process -- does the process work
8 that they take the equipment from the county, use it, and then
9 return it?

10 **A.** Yes.

11 The only county that I know of that -- well, that I have
12 been able to find, through my phone calls, is in Clayton County
13 there were two municipalities that ran their own elections
14 using BMDs. So Jonesboro, for instance, borrowed the BMDs and
15 the scanners from Clayton and then they used them and returned
16 them.

17 MR. BEDARD: Your Honor, I'm sorry, I'll just
18 interject here. I think there is a lack of foundation here.
19 She hasn't explained what the basis is of her understanding for
20 this information, whether it is out-of-court statements from
21 people who aren't here --

22 THE COURT REPORTER: Please slow down.

23 THE COURT: I'm just going to stop at whether there
24 is a lack of foundation. I think you have to establish the
25 foundation.

1 All right. I sustain the objection. But then you've
2 got to have her establish what she -- what exactly she's basing
3 that on. Her reporting on this as to the two entities or
4 municipalities in Clayton County.

5 BY MR. MCGUIRE:

6 **Q.** And you have testified a good bit here about what your
7 understanding of municipal practices is in conducting their own
8 elections.

9 What is the basis for the knowledge that you are telling
10 us about?

11 **A.** I have gathered as much information as I could from the
12 Secretary of State's office, which is the only thing that they
13 have is a spreadsheet that has -- that had the municipal
14 elections on it. But it was very incomplete.

15 For instance, in Fulton County, three of the large
16 municipalities that did have municipal elections weren't even
17 listed on the sheet.

18 So then -- what I had to do then was to call various
19 counties, and I just -- I only concentrated on the metro
20 Atlanta area. But I called them all to see which of their
21 municipalities was having their own elections.

22 Most of the time if a municipality is holding their own
23 election, the county says, oh, you will have to call them to
24 find out, you know, what equipment they are using because we
25 have nothing to do with it. So there was a lot of phone calls.

1 For instance, from Jonesboro I have --

2 MR. BEDARD: Ms. Nakamura, I'll just interrupt you
3 right there and move to strike and object to the testimony to
4 the extent she's basing it off of calls with county officials.

5 THE WITNESS: Can I add to that, though?

6 MR. McGUIRE: No.

7 THE COURT: I'm going to -- if you want to explain
8 something, then I will -- I will defer waiting on -- until I
9 can hear your answer and then I will -- Counsel, you can sit
10 down.

11 MR. BEDARD: Thank you, Your Honor.

12 THE WITNESS: I have also done open records requests
13 with the municipalities.

14 So, for instance, from Jonesboro I have the -- they
15 call it a chain of custody form that has the number of BMDs
16 that they borrowed, the scanners that they borrowed, and so I
17 know that that equipment was borrowed.

18 THE COURT: Have you obtained -- have you done Open
19 Records Act information like that request for other
20 jurisdictions, municipal jurisdictions as well?

21 THE WITNESS: Yes, I have. I did with Jonesboro. I
22 did those two especially because they ran BMD elections.

23 Jonesboro actually would have borrowed from Clayton,
24 but Clayton County was also running a countywide election at
25 the time. And they didn't have enough BMDs. So Jonesboro --

1 Riverdale had to go and purchase BMDs on their own for about
2 \$43,000.

3 MR. BEDARD: And, again, I'll just reiterate again,
4 hearsay objection and best evidence rule. She's saying she's
5 getting it off of open records requests. Those documents
6 aren't here. They need to be introduced. So we'll just
7 reiterate, again, our objection to this whole line of --

8 THE COURT: That's fine. You've reiterated.

9 MR. BEDARD: -- testimony. Thank you, Your Honor.

10 THE COURT REPORTER: I need everybody to slow down.
11 I cannot keep up.

12 THE COURT: Is there anything additional you want to
13 ask as to address the objection or lay a foundation for the
14 witness' testimony?

15 **(There was a brief pause in the proceedings.)**

16 MR. MCGUIRE: Yeah. Yes, Your Honor.

17 First of all, just as a legal argument on the
18 objection, I think Mr. Bedard is essentially trying to recast
19 anything that is gained through research as hearsay. And
20 hearsay is technically her attributing something -- you know,
21 saying -- making a statement that is offered for the truth of
22 the matter.

23 So I will rephrase my questions so that I get to her
24 understanding rather than through the things that were said to
25 her.

1 But I am happy to continue laying a foundation for
2 how she's done her research to show that her understanding is
3 founded.

4 MR. BEDARD: Your Honor, if it is just for her
5 understanding, we'll lodge a relevance objection. I don't
6 understand what her personal understanding is about what all
7 these different municipalities are doing, how that is relevant
8 to the case if we're not accepting it for the truth of the
9 matter asserted as to what these municipalities are actually
10 doing.

11 I think she's up there, she's trying to offer up
12 testimony and her opinion about what is better versus
13 hand-marked paper ballot and what municipalities can do versus
14 what the State has required for BMDs for in-person voting. The
15 only basis for that opinion --

16 THE COURT: Now you're going too fast again.

17 MR. BEDARD: I'm sorry.

18 THE COURT: You're just not going to have a good
19 record.

20 MR. BEDARD: You are right. I'll slow down. I was
21 born in Chicago, so I just talk a little bit faster.

22 THE COURT: That's all right.

23 MR. BEDARD: So, again, the whole purpose of this
24 line of questioning is to establish her opinion that
25 hand-marked paper ballots used in municipal elections are a

1 better voting system because they are faster, they are more
2 efficient, they are more secure, whatever the basis is, than
3 the State required BMD system on the state level.

4 The only basis for that is her observations, her
5 out-of-court observations, her open records request, all these
6 sort of things. And you have to take the truth of what those
7 are saying in order for her opinion to have any relevance.

8 THE COURT: All right. Let me just say, I think
9 you've made your objection very fully and we're consuming too
10 much time with it at this juncture. But I appreciate it.

11 And if there is five other sentences you want to say
12 now, go ahead. But then we're going to just proceed.

13 MR. BEDARD: I understand Your Honor wants to move
14 fast. Totally agree with that. If Your Honor can agree that
15 we are observing -- or reserving all objections to her
16 testimony, otherwise I do feel like I need to continue to make
17 them for the record.

18 THE COURT: Well, you can reserve your objections.
19 But as a whole it is not -- it is not a practice I think is
20 wise.

21 But we have engaged in so much discussion about the
22 objections at this point that I would like to proceed. I would
23 like to give counsel for plaintiff here an opportunity to
24 address the foundation and his contention so it is fully on the
25 record as well.

1 And I think it is preferable to allow her testimony
2 still but without, you know, trying to avoid rank hearsay.
3 She's a lay witness. She's -- but she has significant
4 experience both in the computer science area, apparently, which
5 needs to be clarified to me what that experience is more in
6 detail. But she's not an expert witness.

7 And at the same time she has extensive experience in
8 visiting a variety of jurisdictions relating to -- and has her
9 own observations. She's -- I think I've tried to address the
10 most rank hearsay issues, and we're going to go on on that
11 basis at this point.

12 When I look at the record, if something seems not
13 reliable, I will not -- because of the evidentiary rules, I
14 will proceed. But at this point I would ask plaintiffs'
15 counsel to make sure that the foundation is laid for what
16 you're asking for so that we don't have to keep on going --
17 having this type of dialogue. Thank you.

18 MR. McGUIRE: Certainly, Your Honor. Thank you.

19 Would you rather me do some of those foundational
20 questions now or --

21 THE COURT: Well --

22 MR. McGUIRE: -- going backwards or just is this a
23 going forward --

24 THE COURT: Going forward and then you can go back
25 and talk about her experience in the back. But my

1 understanding, from the witness' testimony, is that she was
2 focused on municipal elections in the metropolitan area.

3 And I would have to go back and look at the
4 transcript at this point to see where you were about to stop.
5 But there was something you were trying to clarify at the point
6 we stopped and there were further objections. I'll try to tell
7 you where that was.

8 **(There was a brief pause in the proceedings.)**

9 THE COURT: You said, Your Honor, first of all, just
10 as a legal argument on the objection, I think Mr. Bedard is
11 essentially trying to recast anything that is gained through
12 research as hearsay. And hearsay is technically attributing
13 something -- saying -- making a statement that is offered for
14 the truth of the matter. So I will rephrase my question so
15 that I get to her understanding rather than through the things
16 that were said to her. But I'm happy to continue laying a
17 foundation for how she's done her research to show that her
18 understanding is founded.

19 And I think that is -- creating that foundation
20 and -- is important.

21 MR. MCGUIRE: Okay.

22 BY MR. MCGUIRE:

23 Q. So let's clarify how you have an understanding of the
24 things you are testifying about.

25 First of all, you've testified that you observed elections

1 with your own eyes; right?

2 **A.** Yes, I have.

3 **Q.** Okay. So let's -- is there anything that we have talked
4 about here that -- about these municipal elections that you
5 talked about happening that you, yourself, didn't see that you
6 need to -- that you know about through research rather than
7 through actually observing it?

8 **A.** For instance, the fact that the Clayton County
9 municipalities used -- that Jonesboro and Riverdale ran their
10 own elections using BMDs, that was all research. So I did not
11 see it with my own eyes.

12 **Q.** Okay. So let's talk about what research you did for that
13 particular point.

14 **A.** I called both of the Riverdale and the Jonesboro city
15 clerks who are the election superintendents. I had
16 conversations with them. They told me that they ran their own
17 elections.

18 I learned that, you know, Jonesboro borrowed machines from
19 Clayton County. I learned that Riverdale had to buy their own
20 equipment. I have the city council notes. Yeah. I OR'ed the
21 notes from the city council meeting --

22 THE COURT: Open record?

23 THE WITNESS: Open records, yes.

24 BY MR. MCGUIRE:

25 **Q.** Continue.

1 **A.** -- that -- where they decided that they would go ahead and
2 buy the machinery and spend \$43,000. I think it is \$43,000.
3 And I think that is -- that is what I did. Yes.

4 **Q.** Okay. And so in terms of doing research about county
5 practices --

6 **A.** Yes.

7 **Q.** -- who did you -- what was -- aside from talking to
8 officials, what other things -- and open records requests, was
9 there anything else that you did to gain an understanding of
10 what municipal law requires or what municipal practices are?

11 **A.** I looked at the OCGA to see what was required for
12 municipal elections. It turns out that there used to be a
13 section in the OCGA that had to do with municipal elections.
14 That has all been -- I don't know if you say struck out or --
15 so now municipalities have to follow the regular, you know, law
16 on elections.

17 And there is just a little section that says that
18 municipalities are free to run their own elections and that if
19 they want to borrow equipment that the counties must do so free
20 of charge.

21 **Q.** So is it fair to say that you relied on Government sources
22 of information for your understanding of how these things work?

23 **A.** Yes.

24 **Q.** And did those Government sources of information include
25 the Secretary of State's own website?

1 **A.** Yes. I tried. Unfortunately, the Secretary of State's
2 website has very little about municipal elections. When I did
3 an open records request to the Secretary of State's office to
4 see if they had a list of what equipment municipalities were
5 using, if they were doing hand-marked paper ballot elections or
6 BMD elections, they said that they had no responsive records.

7 **Q.** All right. I'm just going to close this up by asking you
8 just a few more questions.

9 So I would like you to focus on your own personal
10 observations for this answer. What is the difference between
11 how the hand-marked paper ballot municipal elections you have
12 observed are conducted compared to the BMD elections?

13 **A.** So I observed BMD elections in Fulton County and also Cobb
14 County. And what I found was watching the hand-marked paper
15 ballot municipalities in Gwinnett County, the -- from an
16 observer's point of view, the voters had a much simpler and
17 faster time to vote using the hand-marked paper ballots.

18 **Q.** Okay. Now, I'm going to shift gears. We talked a little
19 bit about equipment being moved back and forth.

20 **A.** Yes.

21 **Q.** Have you and your volunteers observations of elections
22 from 2019 to now included any observations of physical security
23 practices?

24 **A.** Yes.

25 MR. BEDARD: Again, Your Honor, I just object to

1 hearsay to the extent her observers observed anything.

2 THE COURT: All right. Why don't we start with what
3 she's observed personally.

4 MR. MCGUIRE: Okay. That was going to be my next
5 question.

6 BY MR. MCGUIRE:

7 Q. So what you have observed in terms of physical security?

8 A. Personally, I have observed -- so part of my practice is
9 to observe some polling places where they are closing down for
10 the night during early voting. So that means that because
11 there's three weeks of early voting, for BMDs they have to
12 leave the machines in the location where, you know, the voting
13 is happening, whether it is a library, a gym, a university.
14 There are many, many different venues where elections are held
15 as polling places.

16 And during early voting, for the BMDs, when that location
17 is being closed down, the security measures are that the poll
18 workers have zip ties and they sort of zip tie closed the BMD
19 carrier, for instance, in Fulton and Cobb Counties, and the zip
20 ties have a little serial number on it. So they note the
21 numbers on the serial number.

22 And in the morning when the poll workers return, they are
23 supposed to make sure that the zip ties have not been disturbed
24 and that the serial numbers are the same.

25 Now, depending on how many BMDs there are in a location,

1 this takes quite a long time for the poll workers. And I
2 remember one time when I was walking out of Roswell Library
3 with the -- or it may have been up in Alpharetta, one of the
4 libraries with the poll workers, I saw the cleaning crew behind
5 us. And it occurred to me that there are many people who have
6 keys to these rooms, whether it is a gym or library, et cetera.

7 When I stayed behind at Peachtree Corners to watch them
8 lock up their ballots, it was a very simple process. They had
9 their log sheets for which -- how many ballots had been used.
10 They had their stack of ballots. They put it in a secure
11 container. They locked it up with the key that only the
12 superintendent and probably her assistant superintendent had.

13 And so the room obviously was locked up. But there was
14 no -- you know, the ballots themselves were in a much more
15 secure -- to me it looked that it was a lot easier to secure
16 those ballots and that I did not worry that somebody else might
17 have a key to access those.

18 **Q.** Now, we've heard some testimony yesterday about something
19 called sleepovers.

20 Do you know what that is?

21 **A.** Yes. Yes.

22 **Q.** What is --

23 **A.** So the reason I watch this process during early voting is
24 because the BMDs that are left in the room are sleeping over.
25 They are staying over that night or that weekend. And because

1 a lot of these locations that are being used as polling places
2 are also public locations, you know, libraries, churches,
3 universities, there are -- there is a lot of foot traffic.

4 And one time one of our CGG members, Liz Throop, went to
5 church and saw an open door where there were BMDs easily
6 accessible to anybody who was going to church on that Sunday.

7 Now, the election was being held on a Tuesday. This was
8 actually not a sleepover for early voting. This was a
9 sleepover for election day. They have to bring in new machines
10 for election day. And because they are so big, it takes
11 several days to deliver them all to the polling places.

12 They used to be able to -- you know, the DREs were
13 actually small. So everything was set up in one morning.

14 But with the BMDs, what they found is it takes so many van
15 loads to get all of the equipment into the polling places that
16 they are left sometimes on a Friday, sometimes on a Saturday,
17 sometimes on a Sunday for an election that is happening on
18 Tuesday.

19 And so Liz was actually able to walk into the room, saw a
20 church -- somebody who works at the church --

21 MR. BEDARD: Objection, Your Honor, to extent it is
22 something Liz saw. She lacks foundation, lacks personal
23 knowledge, et cetera.

24 THE COURT: Omit the discussion of what Liz saw.

25 THE WITNESS: Okay.

1 THE COURT: Liz can come if she's on the list.
2 Otherwise, just -- you can proceed.

3 THE WITNESS: So there are many occasions where we
4 know of -- and also through SEB meetings, we know that there
5 are many, many cases of equipment sleeping over that has been
6 accessible to the public.

7 MR. BEDARD: Objection, Your Honor, to the extent it
8 is based on something at an SEB meeting.

9 THE COURT: Well --

10 MR. BEDARD: Hearsay again.

11 THE COURT: It is not hearsay if it is in the public
12 record, and they are -- I assume that the -- I mean, do you
13 want them to have to go and introduce the public record?

14 MR. BEDARD: I mean, potentially, Your Honor, if they
15 are testifying to something that somebody has raised in the
16 public record. Again, we don't have a transcript. We don't
17 know what -- she's just testifying to her own -- what she is
18 hearing. So ...

19 THE COURT: All right. Well, I was assuming there
20 was --

21 THE WITNESS: I can say from my own experience what I
22 have seen is going, for instance, early in the morning to an
23 elementary school -- a lot of schools have glass doors, you
24 know, just to be more friendly and inviting. And many schools
25 use the sort of entrance area because it is so wide as the

1 polling place. And you can easily see the equipment. You can
2 easily access the equipment, if you have a key. You can see
3 the serial numbers and the zip ties. You know, I think it is a
4 security issue.

5 THE COURT: And if you are -- the plaintiffs are
6 intending to reference something that happened at the SEB and
7 there was some official discussion of it, then you probably
8 need to get us that record.

9 MR. MCGUIRE: Okay.

10 BY MR. MCGUIRE:

11 Q. Let me switch gears and wrap up here. We've heard
12 throughout this case from the defendants that voters make more
13 mistakes when they use paper ballots versus using BMDs.

14 How do your observations of those two different kinds of
15 elections bear out that claim by the defendants?

16 MR. BEDARD: Objection, Your Honor. Again, this is
17 extremely specialized knowledge. They have experts who are
18 testifying about this later. She has no idea what voters are
19 or are not doing. Even if we're limiting it just to her
20 observations, she's only been able to observe whether people
21 have looked at the ballot or not looked at the ballot. She
22 doesn't know whether they have made mistakes --

23 THE COURT: All right.

24 MR. BEDARD: Again, my --

25 THE COURT: My marvelous court reporter, who really

1 is the most extraordinary court reporter, is going to bite your
2 nose off at some point. But she won't have to, because I will
3 have to in order to keep her happy.

4 MR. BEDARD: I've had too much coffee.

5 THE COURT: I'm working hard on having -- being
6 equitable in my tone.

7 MR. BEDARD: Fair enough.

8 THE COURT: So your objection is noted. I'm going to
9 say to the extent you can't get the objection more
10 specifically, we'll just -- it is noted. And I think it is an
11 appropriate objection unless you can get a little -- more
12 concrete as to particular observations, all right.

13 BY MR. MCGUIRE:

14 Q. So you're aware that we have heard the defense that voters
15 make more mistakes when they use paper ballots?

16 A. Yes. Especially people like Gabe Sterling say that all
17 the time.

18 Q. Now, have you, in the course of your hundreds of hours of
19 election observations, seen anything that looks to you like
20 voters making mistakes on paper ballots?

21 A. No.

22 If I can be a little bit more specific, one of the
23 arguments --

24 THE COURT: Just before you start, do you believe
25 that you have conducted hundreds of hours of observations or

1 not?

2 THE WITNESS: Yes, I do.

3 THE COURT: Do you have any -- any rough idea of how
4 many hours you have observed elections in the last four years?

5 THE WITNESS: That would be the hundreds of hours,
6 yes.

7 THE COURT: All right. Now you can ask the -- try to
8 make it as clear as possible what you are eliciting.

9 BY MR. MCGUIRE:

10 **Q.** So during that time, have you -- have you watched
11 individuals voting who have appeared to have a problem with
12 their ballot that looks like they have realized they made a
13 mistake?

14 **A.** Yes. Absolutely. Which happens on both BMDs and on
15 hand-marked paper ballots. It is called a spoiled ballot. If
16 somebody realizes that the paper, whether it is a ballot
17 printout or a hand-marked paper ballot, is wrong and they want
18 to -- they don't want that to be scanned, they then have to go
19 and ask the poll manager for a new ballot.

20 And this can happen, again, whether it is a BMD or a
21 hand-marked paper ballot. I think the question that you were
22 asking is whether I have seen that happen more often with
23 hand-marked paper ballots as opposed to BMDs, and my answer is
24 no.

25 I have actually asked the number of spoiled ballots at the

1 largest hand-marked paper ballot municipality. So in Peachtree
2 Corners they had a total of 2,000 -- I may have this wrong, but
3 I think it is 2,446 ballots. And out of that, they had six
4 spoiled ballots. So that is -- my calculation was it was
5 .25 percent of ballots was spoiled.

6 In Sugar Hill -- although, it could have been -- I think
7 it is Sugar Hill, the number of ballots they had was over a
8 thousand and they only had one spoiled ballot. So you know
9 we're talking about 0.1 percent.

10 THE COURT: These were places using hand-marked paper
11 ballots for the municipal elections?

12 THE WITNESS: Yes. Municipal elections.

13 So it is a very, very small number.

14 The other thing that I noted was I have heard, you
15 know, the Secretary of State's office say that the problem with
16 hand-marked paper ballots is that people can overvote and that,
17 you know, that wouldn't get caught and so their vote would be
18 nullified.

19 That is not true at all because the scanners are
20 programmed to kick out overvotes.

21 MR. BEDARD: Objection, Your Honor. Calls for
22 speculation. Lack of foundation. I don't know what the basis
23 is for her opinion that the scanners are programmed --

24 THE COURT: All right. Sustained.

25 MR. BEDARD: Okay.

1 BY MR. MCGUIRE:

2 Q. Have you seen paper ballots rejected for containing
3 overvotes?

4 A. No, I have not.

5 Q. So based on the observations that you and your volunteers
6 have made of hand-marked paper ballot elections and BMD
7 elections, have you personally reassessed your own preference
8 for voting on paper versus voting on a BMD?

9 A. I much more strongly prefer paper now. A hand-marked
10 paper ballot than a BMD.

11 Q. And if you had to say, you know, why, what is the reason
12 for that conclusion?

13 A. There is really several. That I have the voting privacy
14 that I know that I'm going to be able to vote an absolutely
15 secret ballot.

16 I know that my vote is much more secure. Nobody can hack
17 my paper ballot because I carry it from where I mark my votes
18 to the scanner. Nobody is going to -- I have actually heard
19 Gabe Sterling say that it is easy to hack a paper ballot
20 because somebody can put a mark on it and make it into an
21 overvote.

22 Unless somebody attacks me with my ballot to mark that
23 ballot with an overvote and me not notice it and take it to the
24 scanner, I don't think that can happen. So it is a much more
25 secure way to vote.

1 And I don't have to worry about QR codes. I don't have to
2 worry about misprogramming, programming errors, hacking, any of
3 that. So yes.

4 **Q.** Now, in fairness to Mr. Sterling, if somebody got between
5 your mail ballot and the scanner after you sent it off, is his
6 criticism accurate?

7 **A.** Well, then -- I mean, the same -- after a ballot has been
8 scanned, whether it is a hand-marked ballot or a printed
9 ballot, the protocols for that ballot from the scanner onwards
10 is the same. So ...

11 **Q.** But with a mail ballot, once you --

12 **A.** Oh, with a mail ballot.

13 **Q.** -- release it to somebody, you don't have any control over
14 what happens to it after that; right?

15 **A.** Correct.

16 **Q.** Is that true of a paper ballot you cast in the precinct?

17 **A.** Not at all.

18 MR. McGUIRE: So no further questions on direct.

19 THE COURT: All right. Would you just clarify -- I
20 know that the witness has some type of technical training or
21 job experience.

22 MR. McGUIRE: Yes.

23 THE COURT: And I went back to look at what you had
24 elicited and I'm not sure it is clear. I know she attended
25 Wellesley College.

1 Would you clarify what her professional or
2 educational background is.

3 MR. McGUIRE: Yes.

4 BY MR. MCGUIRE:

5 **Q.** Could you tell us a little bit about what you studied at
6 Wellesley and then just give some brief summary of your
7 professional career after.

8 **A.** Sure.

9 So at Wellesley I did a double major in computer science
10 and cognitive science. I was actually interested in artificial
11 intelligence.

12 But during my last year of college, I worked at
13 Lotus 1-2-3. I don't know if you remember back then --

14 THE COURT: I do.

15 THE WITNESS: -- but I was actually involved in -- so
16 I did college three days and I worked two days. And I was a
17 manager for -- in quality assurance, which means that -- it was
18 an extremely fun job, I just -- I worked with the programmers
19 in debugging or finding bugs. The program was a program that
20 was an add-on to 1-2-3.

21 So scientists could hook up their equipment to the
22 computer and the readings from the equipment would go straight
23 into a spreadsheet. So, you know, I did a lot of bug reports,
24 we called it. So that was my first computer job. Actually,
25 before that I did an internship at IBM Japan when I lived in

1 Japan.

2 After that, I went to Compaq Computer Corporation.
3 Actually, I had a job with a Japanese conglomerate. They were
4 called -- they are called Recruit, Incorporated. The U.S.
5 version is Recruit USA. Even though it sounds like a
6 recruiting company, they are more like Time Life. So they
7 were -- they started with magazines. That was like a
8 recruiting job, information magazine, but they expanded into
9 computer systems.

10 So in New York City I was in charge of the sales and
11 marketing for large super computers and what they called smart
12 buildings in the New Jersey area to the Japanese financial, you
13 know, companies.

14 And then from there I went to Compaq Computer
15 Corporation which was the -- you know, the father of laptops,
16 and I did international marketing. So I worked with Japanese
17 vendors and opened -- helped open a subsidiary in Japan.

18 BY MR. MCGUIRE:

19 Q. So is it fair to say initially you started out doing more
20 technical stuff in computers?

21 A. Yes.

22 Q. And later you moved to marketing?

23 A. Yes.

24 And I have seen both hardware and software companies.

25 THE COURT: Are you still working with any of the any

1 computer companies or tech?

2 THE WITNESS: Well, unfortunately, I had to quit
3 while I was at Compaq. I got sick. So I have a chronic
4 illness, and I can't work a full-time job.

5 THE COURT: So you have devoted yourself to other
6 volunteering after that?

7 THE WITNESS: Yes, yes. And I found things that I'm
8 passionate about. So it is great.

9 THE COURT: And did you indicate whether you were an
10 officer or just simply heading these projects for the -- on
11 behalf of the CGG?

12 THE WITNESS: For CGG, I am the assistant secretary.

13 THE COURT: Thank you.

14 THE WITNESS: Thank you.

15 MR. McGUIRE: Nothing further. Thank you.

16 THE COURT: We're going to take a five-minute break
17 before we begin. We'll take lunch after you are concluded.

18 COURTROOM SECURITY OFFICER: All rise. Court stands
19 in recess for five minutes.

20 **(A brief break was taken at 12:06 PM.)**

21 THE COURT: Counsel, I want to make sure -- to say
22 that, of course, your objections are noted in the record and
23 we're not going to rely on hearsay to the extent that I allowed
24 it in and it is not going to be the basis of any ruling. So I
25 want you to feel comfortable that you have -- that you have

1 done what you needed to do.

2 MR. BEDARD: Of course. Thank you, Your Honor.

3 Again, it is one of those things, counsel behind me
4 are very smart folks. God forbid this ends up somewhere else
5 other than here.

6 THE COURT: It will end up somewhere else.

7 MR. BEDARD: I have no doubt. I didn't want to say
8 that for sure.

9 THE COURT: Unless something else happens in the
10 world or the legislature --

11 MR. BEDARD: I just don't want, you know, obviously
12 an argument at some point, that I waived something.

13 THE COURT: You are all very smart lawyers. I
14 just -- it is not that I'm trying to rush any of you because --
15 in fact, I think I have allowed a lot of time for this. But I
16 just want to -- just as -- not just for you, by any means. I
17 want you to be able to make your objections and be clear
18 without everything -- my getting submissions after the trial
19 about 100 different concerns, evidentiary concerns. But at the
20 same time we need to move forward. So ...

21 MR. BEDARD: Understand, Your Honor. Thank you.

22 THE COURT: All right. Very good.

23 Go ahead.

24 CROSS-EXAMINATION

25

1 BY MR. BEDARD:

2 Q. Ms. Nakamura, you are aware you are still under oath,
3 correct, after the break?

4 A. Yes.

5 Q. Great.

6 A few clarifying questions to start off. We haven't had a
7 chance to meet. By the way, my name is Ed Bedard, counsel for
8 the State.

9 You're not a plaintiff in this case; correct?

10 A. Correct.

11 Q. Okay. And I think you testified you live in Fulton
12 County?

13 A. Yes.

14 Q. No plans to move any time soon?

15 A. No.

16 Q. All right. You are not a designated expert in this case;
17 correct?

18 A. Correct.

19 Q. You are not a cybersecurity expert?

20 A. Correct.

21 Q. Not a visual recognition expert?

22 A. Correct.

23 Q. No expertise in memory or recall?

24 A. Correct.

25 Q. You have not conducted any studies on that issue; correct?

1 **A.** Correct.

2 **Q.** You are not a statistics expert?

3 **A.** Correct.

4 **Q.** Let's see. You've never run an election yourself;
5 correct?

6 **A.** No, I have not.

7 **Q.** Never worked as a paid election worker?

8 **A.** No, I have not.

9 **Q.** I'll come back to some of those things later.

10 Let's talk about some of the issues you identified as your
11 complaints about the BMD system. And I think there were four.
12 I just want to clarify, make sure I've got them all.

13 One was ballot secrecy?

14 **A.** Yes.

15 **Q.** Two is the QR code and that you weren't sure that your
16 vote was going to be counted correctly --

17 **A.** Correct.

18 **Q.** -- right?

19 The third one was I think you needed to check twice on the
20 BMDs where you only need to check once on a hand-marked paper
21 ballot?

22 **A.** Correct.

23 **Q.** Okay. And then the last one was -- and I apologize, I
24 can't read my own handwriting -- an issue with -- well, let me
25 ask you this, what was fourth one, if you remember?

1 **A.** The fourth one --

2 **Q.** I can't read my own handwriting here.

3 **A.** The fourth one was if there should be an issue where I
4 know that I have pressed all the right buttons, and if the
5 computer makes an error or if the printout has an error, then
6 the poll worker or poll manager usually assumes that it is
7 voter error.

8 **Q.** Got it.

9 Okay. Something to do with the system is what I was
10 interpreting out of my own handwriting so that seems to track.

11 Let's start with that last one. So just to clarify, your
12 issue is that if you identified a problem you are not sure that
13 a poll worker would solve the underlying problem for everybody
14 else; correct?

15 **A.** Correct.

16 **Q.** You are confident that they could fix the problem for you;
17 correct?

18 **A.** No, I am not.

19 **Q.** But you could spoil your -- you could spoil that ballot
20 right there and you could recast one to make sure that it was
21 correct; right?

22 **A.** Correct.

23 **Q.** And then you could look at the BMD printout and you could
24 confirm, okay, this one is correct now; right?

25 **A.** Correct.

1 Q. So you could solve that problem for you; right?

2 A. For the text, yes.

3 Q. Yeah. But you're just not sure if they could solve it for
4 everybody else; right?

5 A. Correct. Or that anybody else would look at their ballots
6 to even notice that there was a problem.

7 Q. But it was good for you? You could figure it out for you?
8 That part you are sure you can figure it out; right?

9 A. And if, for instance, if I saw that there was a machine
10 that was flipping from George Washington to Abraham Lincoln,
11 unless they actually take it out of commission, then they
12 haven't really solved it for me.

13 If they tell me just go to another machine, then I don't
14 feel that they have solved it for me.

15 Q. But they could solve it at least for the paper printout
16 for you; right?

17 A. For the paper printout, yes.

18 Q. All right. Thank you.

19 Let's go back to the ballot secrecy complaint that you
20 had. You are not aware of anybody who has seen your vote;
21 right?

22 A. I am. My husband did.

23 Q. Okay. Other than your family, you're not aware of anybody
24 who has seen your vote; right?

25 A. Correct. But I still --

1 Q. Do you talk to your husband about how you vote?

2 A. Not really. No.

3 Q. Not really.

4 Okay. Is it something that you keep secret from him
5 though?

6 A. It is not something that I keep secret, but it is
7 something that I feel I should be able to do in secret.

8 Q. Okay. And did he observe your -- while you were voting or
9 did he observe your paper printout?

10 A. The day that we had to all go vote in person, we were --
11 we were sort of positioning ourselves so that we weren't too
12 close to each other. But when he turned around, he actually
13 saw my vote and our child's vote, which bothered him even more.

14 Q. Okay. Other than your husband, though, you're not aware
15 of anybody who has seen your vote; right?

16 A. I'm not aware of people seeing it. But I know that people
17 who walked behind me or, you know, at -- are at -- within
18 eyeshot distance can see how I am voting. So ...

19 Q. It is possible but you don't know of anybody who has seen
20 your vote, apart from your husband?

21 A. Nobody has told me that they saw my vote.

22 Q. And your husband didn't see your entire ballot; right?

23 A. Correct.

24 Q. Okay. Anyone who has seen -- you are not aware of anybody
25 who has seen your vote, again other than your husband, who

1 knows you or knows what your name is; right?

2 **A.** Correct.

3 **Q.** Your vote hasn't been published anywhere?

4 **A.** No.

5 **Q.** Okay. Okay. And your concerns about the BMD machines,
6 when it comes to secrecy, is primarily about how they are laid
7 out in the room; correct?

8 **A.** That is not the issue. The layout has a lot to do with it
9 because -- that is not the only issue. Depending on the
10 layout, you can see a lot of machines or you can see only a
11 few.

12 But for every BMD, whether it is in one of those
13 Fulton/Cobb/DeKalb carriers or they are laid out on a table
14 with the blue screens around them or any other configuration,
15 anybody walking behind them or standing right next to them can
16 see how a person is voting.

17 **Q.** You would agree, though, there are ways to lay it out or
18 procedures you could adopt that would solve those problems for
19 you; correct?

20 **A.** There are ways to ensure that a few machines could be --
21 could have absolute secrecy. There is a huge problem with it
22 as well, though, because -- for instance, in this room, the
23 only way that I would be able to put machines so that you --
24 somebody has absolute voter secrecy is to put four BMDs in the
25 four corners and then put them towards the corner.

1 But the other law, other than the absolute ballot secrecy,
2 that has to be followed is that the machine has to be visible
3 to poll workers so that tampering -- you know, so that they can
4 watch for tampering.

5 When the machines are turned around so that the poll
6 workers can't see the machines, now there's possibilities of
7 tampering that the poll workers can't notice.

8 **Q.** So your problem is that it doesn't have absolute secrecy?

9 **A.** Correct.

10 **Q.** Okay. All right. Thank you.

11 And that -- that concern is based on your understanding of
12 what Georgia law is as far as what it requires for secrecy?

13 **A.** Absolute ballot secrecy, yes.

14 **Q.** All right. Let's talk about the QR code. I believe you
15 testified just a moment ago that your problem with the QR code
16 is that you can't be sure when you voted that what is being
17 counted is being counted correctly; right?

18 **A.** Correct.

19 **Q.** And voting a hand-marked paper ballot would solve that
20 problem for you?

21 **A.** Yes.

22 **Q.** Okay. You're not challenging, though, the use of scanners
23 in this case; right?

24 **A.** So you bring up a very good point. Scanners can also have
25 errors. I know from a hand-marked paper ballot that what I see

1 is what I intend to be counted and that is what is supposed to
2 be counted.

3 Now, if there was a scanner error, the other part of what
4 we are asking for for relief is better audits.

5 I know that Dr. Philip Stark is going to be coming up here
6 to talk, so I'm not going to say anything about it other than
7 scanning is not -- is not enough. We have to have very
8 rigorous audits after the scanning to ensure that all the votes
9 are -- that the winner did actually win.

10 **Q.** Sure.

11 So let's drill down on this. So even with a hand-marked
12 paper ballot, you agree that just using the hand-marked paper
13 ballot for you would not solve your concern about having a vote
14 counted correctly; right? You need something else in addition
15 to the hand-marked paper ballot; right?

16 **A.** Correct. But it would be greatly alleviated.

17 **Q.** So, but the thing that is really going to solve it for
18 you, that really solves the problem about being sure that it
19 can be counted correctly, isn't so much the hand-marked paper
20 ballot? It's the back-end audit; right?

21 **A.** No, that is incorrect.

22 **Q.** So explain for me the difference. Because with both the
23 hand-marked paper ballot and with the BMD, BMD provides you a
24 paper printout; correct?

25 **A.** Yes.

1 Q. And you can read that and you can confirm that what is on
2 that paper is how you intended to vote?

3 A. Correct.

4 Q. Okay. With a hand-marked paper ballot, the same thing,
5 you can read that, you can confirm --

6 THE COURT: Slow down.

7 MR. BEDARD: I'm getting the look, and I will try and
8 slow down.

9 BY MR. BEDARD:

10 Q. With the hand-marked paper ballot, you can also read that
11 and confirm that that is how you intended to vote; correct?

12 A. Correct.

13 Q. So with both versions, you can confirm that that is how
14 you intended to vote, what is printed there on the paper;
15 correct?

16 A. For myself.

17 However, on the BMD ballot it is the QR code that gets
18 tallied, not the text.

19 Q. Sure. And we'll come back to that here in a second about
20 the QR code, but I just want to be clear. We're talking about
21 the paper printouts here. You can confirm with both that the
22 paper printouts, the human readable text on the paper printouts
23 is what you intended to vote; correct?

24 A. You can confirm it. Not everybody does.

25 Q. Okay. Now, when you go to put them in the scanner -- and

1 again, I'm interested in what you do and what you can do. I'm
2 not interested in anybody else. Okay.

3 When you go to put it in the scanner, when you scan your
4 BMD ballot you don't know how it is being counted; correct?

5 **A.** Correct.

6 **Q.** And when you put a hand-marked paper ballot in a scanner,
7 you don't know how it is being counted; correct?

8 **A.** Correct.

9 **Q.** And, frankly, if you're going to have a hand tally, you
10 don't know how that is being counted; right?

11 **A.** Correct.

12 **Q.** Okay. So you can't be sure with any of them how they are
13 being counted correctly; right?

14 **A.** Well --

15 **Q.** Barring something else --

16 **A.** Yes.

17 **Q.** -- just based on the fact that it is paper; right? You
18 can't be -- you can't be sure that it is being counted
19 correctly just based on the fact that it is paper; right?

20 **A.** Correct.

21 **Q.** So what you need is the ability to go back and to review
22 the paper afterwards; right?

23 **A.** Correct.

24 **Q.** Okay. Now, you're aware that under Georgia law for audits
25 and for hand tallies and re-counts, the controlling ballot is

1 the paper printout; correct?

2 **A.** Correct.

3 **Q.** All right. So if the thing that is providing you with the
4 confidence that it is being counted correctly is not the paper
5 but is the ability to audit on the back end, can you explain to
6 me the difference between the BMD ballot, which uses the paper
7 printout, and the hand-marked paper ballot, which also uses
8 what you marked on paper, what is the difference between the
9 two?

10 **A.** The difference is unless Georgia law was that every single
11 race and every single contest had to be audited rigorously,
12 then we can't be sure that an election is actually -- you know,
13 was decided the correct way.

14 **Q.** So the thing that is going to relieve your concern with
15 the QR code is requiring audits in every single election?

16 **A.** Every single election, yes.

17 **Q.** Thank you.

18 Is that a full hand re-count or just an audit?

19 **A.** A risk-limiting audit.

20 **Q.** Okay. All right. Thank you.

21 And the definition of that risk-limiting audit you would
22 leave up to your experts; right?

23 **A.** I will leave it up to Dr. Stark. Yes.

24 **Q.** So what is a sufficient risk-limiting audit, you would say
25 that is an expert decision?

1 **A.** That is not my wheelhouse.

2 **Q.** So what would satisfy you for the risk-limiting audit we
3 have got to leave up to the experts; right?

4 **A.** Yes.

5 **Q.** Okay. All right. Thank you.

6 Now let's talk about the ability to --

7 **A.** Can I add one thing, though? Because you said that it was
8 just for me. And then you went and said that we're talking
9 about audits, which is for the entire election.

10 **Q.** Yes, but I'm asking for what is going to satisfy your
11 concern.

12 **A.** Well, unless everybody checks their text printout, that --
13 then everything is moot.

14 **Q.** So the only thing that is going to satisfy your concern
15 about the QR codes is making sure that everybody --

16 **A.** Checked the --

17 **Q.** -- reviews and checks?

18 **A.** Yes. Actually checks.

19 THE WITNESS: I am so sorry. I am so sorry.

20 THE COURT REPORTER: Repeat.

21 MR. BEDARD: I'll repeat my question.

22 BY MR. BEDARD:

23 **Q.** So the only thing that is going to satisfy your concern
24 about the QR code is that everybody actually verifies their
25 selections; correct?

1 **A.** Correct.

2 **Q.** Okay.

3 THE COURT: All right. But I missed a beat here.
4 And maybe my attention wandered. Could you explain, is your
5 testimony that -- just a concern that everyone had checked
6 their -- the ballot against a QR code?

7 THE WITNESS: No, not against the QR code. So the
8 only way that I would be satisfied that the BMDs were being --
9 were counting our votes accurately is if every voter completely
10 verified their ballots to the extent that they could even tell
11 if -- if a vote -- you know, a race was missing, a contest, you
12 know, was added in there, that kind of thing. And if there was
13 a complete audit of every single race.

14 THE COURT: And is that with or without a QR code?
15 That is what I'm just a little confused about.

16 THE WITNESS: The gentleman was saying that the audit
17 would be done with the -- with the text of the ballot.

18 THE COURT: With the text?

19 THE WITNESS: Yes.

20 So the QR code would be doing the initial reading
21 after voters completely verified their votes, their ballots,
22 including, you know, whether something is missing or -- I mean,
23 like all -- all 48 of the -- of Fulton's, you know, last
24 presidential election ballot. And if -- if the -- every single
25 one of those 48 contests was also audited rigorously with a

1 risk-limiting audit.

2 THE COURT: But still using the QR code because that
3 is what I'm -- that is what I'm confused relative to your
4 position.

5 THE WITNESS: I mean, I think that was the premise
6 that he was giving me.

7 So my preference would be just for everybody to use a
8 hand-marked paper ballot to vote and then the whole verifying
9 thing is unnecessary. People can choose to verify their vote.
10 But they have already verified it as they vote. And then that
11 gets scanned and then it gets audited.

12 THE COURT: Right. So we're just omitting the
13 possibility that you could use a BMD that printed out -- did a
14 full printout without a QR code? Is that -- or you -- you
15 structured this -- the question so that there is no other
16 option between the two?

17 MR. BEDARD: I'm trying to drill down, Your Honor, on
18 what is it that is going to actually address the concern that
19 they are articulating.

20 And it sounds like, from Ms. Nakamura's testimony,
21 the thing that is going to actually address a concern she's
22 articulating is required audits on the back end. It is
23 irrelevant whether it is QR code, paper ballot, anything else.
24 So --

25 THE WITNESS: No, that is not what I'm saying though.

1 I don't think I articulated it right then.

2 The problem with the BMD is it is supposed to be just
3 an expensive pen. Right. It is supposed to mark your ballot
4 for you, like you would mark your own ballot.

5 The problem is because everybody doesn't verify their
6 ballot, their printed ballot, whether it is -- it has a QR code
7 or not, that non-verification makes it impossible for the audit
8 on the back end if you don't have a piece of paper, a paper
9 trail, that people have verified to be what they want their
10 vote to be.

11 BY MR. BEDARD:

12 Q. Okay. So --

13 A. It cannot be audited.

14 Q. All right. So now I understand the difference here.

15 So the difference is the BMD people aren't reviewing it --

16 A. Yes.

17 Q. -- right? So they are not verifying that those are their
18 selections; right?

19 A. Yes.

20 Q. And with the hand-marked paper ballot, you are saying just
21 the act of doing a hand-marked paper ballot captures their
22 intended vote; right?

23 A. Correct.

24 Q. So voter verified to you is that the vote, the paper --
25 whatever you are doing, whether you are doing a BMD or you are

1 doing a hand-marked paper ballot, that the paper vote is
2 capturing the voter's intended vote; right?

3 **A.** Correct.

4 **Q.** Okay. So you are assuming that the act of voting a
5 hand-marked paper ballot is inherently voter verified; right?

6 **A.** Yes.

7 **Q.** And that it captures the voter's intent; right?

8 **A.** Correct.

9 **Q.** But it is possible for voters to make mistakes --

10 **A.** Absolutely.

11 **Q.** -- on hand-marked paper ballots; right?

12 **A.** Absolutely.

13 **Q.** They can overvote; right?

14 **A.** Yes.

15 **Q.** They can undervote?

16 **A.** Yes.

17 **Q.** They can make stray marks --

18 THE COURT REPORTER: Slow down.

19 BY MR. BEDARD:

20 **Q.** I believe your testimony was they can overvote?

21 **A.** (Witness nods head affirmatively.)

22 **Q.** They can undervote?

23 **A.** (Witness nods head affirmatively.)

24 **Q.** They can make stray marks?

25 THE COURT REPORTER: She's nodding her head. I need

1 an answer.

2 THE WITNESS: Yes.

3 THE COURT REPORTER: Start over, that whole part.

4 BY MR. BEDARD:

5 Q. They can overvote?

6 A. Yes.

7 Q. They can undervote?

8 A. Yes.

9 Q. They can make stray marks?

10 A. Yes.

11 Q. They can fail to follow instructions?

12 A. Yes.

13 Q. And in all of those circumstances, the paper hand-marked
14 paper ballot is not actually capturing the voter's intent;
15 correct?

16 A. Correct. Except --

17 Q. So it is not voter verified under your own definition?

18 THE COURT: Let her answer the full --

19 MR. BEDARD: Well, she answered -- it was a yes-or-no
20 question, Your Honor.

21 THE COURT: Well, I don't think she thought it was.
22 So she started --

23 THE WITNESS: Except the problem with what your
24 premise is, is that the overvote or the undervote or the stray
25 mark would be the final ballot.

1 The way the scanners are programmed, it will catch --
2 well, it doesn't currently catch undervotes. They are not
3 programmed to catch undervotes. So if somebody votes on a BMD
4 ballot and undervotes, the scanner doesn't catch that. That
5 undervote is how the voter voted. They didn't vote for, you
6 know, the city commissioner or whatever.

7 Overvotes, stray marks, things that the scanner can't
8 read will be kicked out. That is the beauty of using a
9 hand-marked paper ballot in a polling place. As opposed to
10 sending it in by the mail where you can't make any corrections
11 if the scanner can't read it.

12 If you vote on a hand-marked paper ballot in person
13 in the polling place and you put it in the scanner and it has
14 an overvote, the scanner will kick it out and say there is an
15 overvote. You can then -- you would have to go through the
16 spoiling the ballot process. But you can correct that.

17 With the stray mark that the scanner didn't
18 understand, the scanner kicks it out and says unreadable -- or
19 I don't know what it says. But it kicks it out. So again, the
20 voter would have to spoil that ballot but they can correct the
21 ballot.

22 BY MR. BEDARD:

23 **Q.** So that is assuming, though, that the software and the
24 scanner is accurate; right?

25 **A.** Correct.

1 Q. And you testified earlier that you believed in your
2 experience based on your background with computer science that
3 any piece of technology can be compromised; correct?

4 A. Right.

5 Q. So the scanner can be compromised in a way that it doesn't
6 kickback overvotes --

7 A. Sure.

8 Q. -- undervotes?

9 And in that circumstance, right, then the vote that is
10 actually being recorded is not what the voter intended?

11 A. Correct.

12 Q. And it is not voter verified --

13 A. Correct.

14 Q. -- because it is not actually what they intended; right?

15 A. Correct.

16 Q. So in this circumstance --

17 A. I'm sorry. And I'm sorry. But it is voter verified to
18 the extent that the voter cast that ballot.

19 Q. But you defined it earlier, voter verified to you, as
20 being a vote is capturing what the voter intended to vote;
21 right?

22 A. Correct.

23 Q. And you would agree that a voter can make mistakes?

24 A. Correct.

25 Q. So if the scanner, which you seem to be okay with, is

1 somehow compromised itself in a way that it doesn't kick back
2 overvotes, undervotes, mistakes, failure to follow
3 instructions, that scanner would still read that and that
4 wouldn't be capturing the voters intended vote; right?

5 **A.** Correct.

6 And do you realize that that -- it would also read the BMD
7 ballot and capture the undervotes and --

8 **Q.** Except that a BMD is programmed --

9 **A.** That's true --

10 **Q.** -- to ask you to --

11 **A.** Yes.

12 **Q.** -- make you confirm that you intend to undervote that
13 race; right?

14 **A.** No. Not on undervotes.

15 **Q.** It prevents you from voting an overvote; correct?

16 **A.** That it does.

17 **Q.** So it prevents some of these issues that are -- that
18 hand-marked paper ballots are subject to; right?

19 **A.** So what you are saying is that if the scanner was -- was
20 misprogrammed or hacked so that overvotes won't be counted, you
21 are saying that that vote wouldn't be -- would be counted
22 incorrectly.

23 And what I am saying is if there are problems with the
24 scanner, a risk-limiting audit will catch it. That is why we
25 need to do very, very rigorous audits.

1 Q. But the risk-limiting audit would be reading a paper
2 ballot that didn't capture the intended vote of the voter;
3 right?

4 A. Correct.

5 Q. It didn't kick back the mistake.

6 So that really -- you said the only reason why a
7 risk-limiting audit would be satisfactory is because it is
8 based on voter verified votes.

9 But in that circumstance the vote isn't voter verified,
10 using your own definition; right?

11 A. Sorry. I'm getting lost in the weeds here. I --

12 Q. That's okay.

13 Let me ask you -- let me go back to the scanner issue.

14 THE COURT: Okay. Counsel, could you explain a
15 little bit -- first of all, how long do you think you're going
16 to be pursuing this discussion? Because I'm having some
17 trouble understanding the relevance of arguing with the witness
18 about this. About her views and exploring it. I'm just trying
19 to, as a matter of law, understand where you are going.

20 MR. BEDARD: Because, Your Honor, the plaintiffs in
21 this case are seeking a particular remedy. They are seeking to
22 find that Georgia's choice of BMD vote -- BMD machines for
23 in-person voting is an unconstitutional burden on the right to
24 vote.

25 What I'm trying to drill down on is what is their

1 identified harm is, because sometimes it seems to change,
2 depending on the briefing. So I'm trying to drill down on it
3 and get real testimony and understand what their harm is, what
4 they think their harm is, and what they think is going to
5 satisfy that harm, and connect the two.

6 Because I think that they are trying to seek a
7 particular remedy here -- of course, you know our opinions
8 here, this is all public policy discussion, all of that, we
9 have made those arguments.

10 But really they are trying to seek a remedy, and I'm
11 trying to identify what is that remedy solving and does it
12 actually solve the thing that they are saying it solves or does
13 it not and are these two things connected.

14 THE COURT: I think that we're going to be here a
15 very long time if you're going to do that with every single
16 witness. And I'm not -- you know, have you chosen this witness
17 for this discussion because she's more knowledgeable?

18 I don't know. But let me just hear from -- you have
19 got plaintiffs' counsel back there. So let me just understand
20 what -- if you're fine with this, I'll allow ten minutes. But
21 I'm not going to go further than that.

22 MR. MCGUIRE: Your Honor, we're not fine with it,
23 not -- least of all because she's actually not a plaintiff,
24 she's just a witness. So her --

25 THE COURT: Well, she's a member of the organization.

1 MR. McGUIRE: She's an informed witness, but she is
2 not speaking on behalf of the organization. She's a fact
3 witness. We called her -- he's made very clear she is not an
4 expert. She's a fact witness. She is not -- it is not a
5 30(b)(6). So she is simply an individual who is giving fact
6 testimony about what she knows.

7 MR. BEDARD: Respectfully, Your Honor, there is no
8 such thing as a 30(b)(6) at trial. You just have fact
9 witnesses. The 30(b)(6) is only a deposition approach.

10 So they have called her. It is their choice to call
11 her. She is clearly testifying on behalf of the organization.
12 Otherwise, her presence here is somewhat irrelevant if she's
13 not a plaintiff and not testifying on behalf of the
14 organization as a member.

15 THE COURT: She's clearly one of the people speaking
16 with a strong organizational affiliation, and I understand
17 that.

18 But let me hear the rest of what Mr. McGuire had to
19 say.

20 MR. McGUIRE: I also believe a lot of the questions
21 have been asked and answered and they're getting a little
22 duplicative.

23 So to that extent, I think he's arguing with the
24 witness, as Your Honor noted. And so, you know, I will object
25 going forward on a question-by-question basis if it is going to

1 continue. But I've been trying to also sit back and see where
2 it is going.

3 THE COURT: All right. Well, I'm not going to allow
4 this course of questioning for more than ten minutes. So it is
5 now 20 of. You have until 10 of.

6 MR. BEDARD: Okay.

7 THE COURT: You can -- after 10 of, if there are
8 other whole ranges -- but this is, I don't think, a very
9 productive line. But you're allowed to do it. That is up to
10 you. If you want to make your record, that's fine.

11 MR. BEDARD: Thank you, Your Honor.

12 Can you read back what the last question was?

13 I actually think I know where I'm going from here.
14 Thank you.

15 BY MR. BEDARD:

16 **Q.** All right. So let's go back to the scanner kicking things
17 back.

18 You were saying you think it would be fine because the
19 scanner could kick back overvotes or undervotes; right?

20 **A.** For?

21 **Q.** If you are using a hand-marked paper ballot in lieu of a
22 BMD-marked ballot --

23 **A.** Yes.

24 **Q.** -- you could -- you were saying that it would be fine with
25 the scanner because the scanner could solve some of the

1 problems we talked about with the hand-marked paper ballot and
2 that it could kick back an overvote or an undervote? It could
3 be programmed that way; right?

4 **A.** Correct.

5 **Q.** Or a mismarked.

6 But it wouldn't necessarily kick back a voter's failure to
7 follow instructions; right?

8 **A.** By that you mean?

9 **Q.** If a voter, you know, failed to kind of follow the
10 instructions on the hand-marked paper ballot and maybe marked
11 something where they didn't intend to, it wouldn't necessarily
12 kick that back; right?

13 **A.** I'm having a hard time picturing --

14 **Q.** Sure. Let me clarify this.

15 So let's say a voter made a mistake, right, in marking out
16 a hand-marked paper ballot. And they accidentally voted for --
17 they filled in the wrong bubble for somebody that they didn't
18 intend to; right?

19 The scanner wouldn't kick that back; right?

20 **A.** Correct.

21 **Q.** And I think you testified earlier that you believed a
22 hand-marked paper ballot is inherently voter verified?

23 **A.** Correct.

24 **Q.** So is it your opinion that a voter does not need to
25 double-check a hand-marked paper ballot to make sure that it is

1 okay?

2 **A.** Not at all. No. I highly encourage everybody to check
3 their printed ballot or their hand-marked paper ballot. Yes.

4 **Q.** So in order to make a hand-marked paper ballot voter
5 verified, you would agree that they need to double-check it to
6 make sure that it correctly captures their intent; correct?

7 **A.** Yes. But I did also say that on a BMD you have to check
8 twice. You have to check the BMD itself to make sure that you
9 pushed all the right buttons and the BMD registered it
10 correctly. And then you have to look at the printout.

11 **Q.** Sure. I mean, you could skip past the first one, right,
12 and just review the printed one?

13 **A.** No. It doesn't let you.

14 **Q.** You could -- all right. I'll let that go.

15 Let's talk about you voting particularly on BMDs, because
16 you voted on both BMDs and hand-marked paper ballots through
17 absentee by mail; correct?

18 **A.** Yes.

19 **Q.** And I think you said you greatly preferred to vote
20 absentee by mail; right?

21 **A.** Correct.

22 **Q.** Because it's a hand-marked paper ballot?

23 **A.** Correct.

24 I did also say that I greatly prefer to vote in a polling
25 place.

1 Q. Sure. Sure.

2 But under the current law, you greatly prefer to vote
3 absentee by mail as opposed to BMD; right?

4 A. Correct.

5 Q. But you voted BMD a few times; right?

6 A. Yes.

7 Q. Including one time because you just missed the deadline to
8 apply for your absentee ballot?

9 A. Yes.

10 Q. When you voted BMD, you have brought in a cheat sheet;
11 right?

12 A. Yes.

13 Q. And you are fully empowered to do that; right?

14 A. Yes.

15 Q. So when you voted BMD personally, you have double- and
16 triple-checked your BMD printout; correct?

17 A. Correct.

18 Q. So when you read that printout, you confirmed that that
19 printout was what you intended to vote; right?

20 A. Correct.

21 Q. In all three circumstances?

22 A. Correct. But I still can't read the QR code.

23 Q. No. That's fair.

24 But the printout, what's used for the audits that you
25 talked about, you confirmed those were correct; right?

1 **A.** Correct.

2 **Q.** So if you are doing an audit of the paper ballots for you,
3 in the circumstances where you have voted on a BMD, those ones
4 correctly capture your intended votes; correct?

5 **A.** Yes.

6 THE COURT: Are you assuming that there is an audit
7 on all the positions voted on or all of the propositions in
8 your question? Because right now there is an audit for --
9 typically for a particular position. So it doesn't verify --
10 an audit doesn't verify the entire --

11 MR. BEDARD: I don't think that was intended in the
12 vote.

13 BY MR. BEDARD:

14 **Q.** It was just if an audit were conducted, the paper printout
15 would correctly capture your intended vote in those three
16 elections; correct?

17 **A.** Three elections? I'm sorry.

18 **Q.** I'm sorry. In those three circumstances where you voted
19 on a BMD -- did I count that correctly? Was it three times?

20 **A.** Yes.

21 **Q.** In those three circumstances, if there was an audit of
22 the -- or a hand tally of the paper printout, those paper
23 printouts correctly captured your intended vote?

24 **A.** For my ballot, yes.

25 **Q.** For your ballot. Yeah. I'm just asking about you.

1 Okay. I want to just briefly -- I think you shared some
2 opinions in your -- in your direct.

3 Those opinions were based on a few things; right?

4 They were based in part on your college degree in computer
5 science; right?

6 **A.** Yes.

7 **Q.** In your work in that space --

8 **A.** Yes.

9 **Q.** -- right?

10 I think you said you had a master's degree. And I can't
11 remember what it was in.

12 **A.** No.

13 **Q.** What was the secondary degree that you had?

14 **A.** Cognitive science.

15 **Q.** Cognitive science. Was that a master's or a bachelor's?

16 **A.** A bachelor's.

17 **Q.** Okay. Some of your opinions are also based on that;
18 correct?

19 **A.** Sure. Yes.

20 **Q.** And you said those opinions are also based on -- you have
21 spoken to a lot of officials; right?

22 **A.** Yes.

23 **Q.** Okay. You collected a lot of information from a lot of
24 different sources; right?

25 **A.** Yes.

1 Q. Your opinions are based in part on your view of Georgia
2 law; right?

3 A. Yes.

4 Q. And reading the Georgia code?

5 A. Yes.

6 Q. Georgia regulations?

7 A. The --

8 Q. Let me clarify that.

9 Like State Election Board rules?

10 A. Yes.

11 Q. Okay. So when you testified about Government sources,
12 included in that was the Georgia code and the SEB rules; right?

13 A. Yes.

14 Q. Okay. I think you said you were aware of fairly
15 specialized terms like sleeping over; right?

16 A. Yes.

17 Q. Okay. In your background, have you done any -- have you
18 had any training or education in risk analysis?

19 A. No.

20 MR. BEDARD: I think I've just got a few more
21 questions, Your Honor. I'm just going to review my outline
22 here and make sure I have got everything.

23 **(There was a brief pause in the proceedings.)**

24 BY MR. BEDARD:

25 Q. On the -- I think just the last thing, it is very small.

1 Two last things.

2 You -- I think you testified you haven't done any
3 scientific studies on voters who have reviewed -- let me
4 rephrase this.

5 You haven't done any scientific studies on the rate at
6 which voters review their ballots; correct?

7 MR. MCGUIRE: Objection. Now it seems like he is
8 calling for expert testimony from the witness.

9 MR. BEDARD: I'm not asking for her opinion.

10 THE COURT: He's asking whether she did any studies.

11 MR. BEDARD: Thank you, Your Honor.

12 THE COURT: Go ahead.

13 THE WITNESS: I have not done any studies.

14 BY MR. BEDARD:

15 Q. Thank you.

16 On the mailbox thing, I just wanted to clarify something.
17 You don't know who hit your mailbox; right?

18 A. No, I don't.

19 Q. Nobody spray-painted any politically-charged language into
20 your lawn or anything; right?

21 A. No, they didn't.

22 MR. BEDARD: All right. Thank you, Your Honor.

23 That's all we have.

24 I think based on the testimony we would, just for the
25 record, again re-lodge our objection to the extent that she

1 gave opinion testimony as an inappropriate lay witness and an
2 undisclosed expert under 702 through 704, which we think she
3 needs to be qualified under.

4 THE COURT: Okay.

5 MR. BEDARD: With that, I'll sit down.

6 Thank you, Your Honor.

7 THE COURT: That's fine.

8 To the extent I ruled contrary, I think obviously I
9 thought it was appropriate lay testimony and based on firsthand
10 knowledge. But to the extent that you may be right, I will
11 look at -- since you vigorously have raised these objections,
12 we will be very careful in reviewing what we rely upon in
13 issuing an opinion.

14 Thank you.

15 MR. BEDARD: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. MCGUIRE:

18 **Q.** Ms. Nakamura, Ms. Bedard asked you a number of questions
19 that were directed at the QR code.

20 **A.** Yes.

21 **Q.** Okay. What part of your BMD ballot contains your actual
22 counted vote?

23 **A.** The QR code.

24 **Q.** Okay. What part of the BMD ballot is used in a post
25 election audit, if there is one?

1 **A.** The human readable text.

2 **Q.** So if those two pieces of the ballot differ, then is your
3 vote being considered in the audit?

4 **A.** In the audit -- so you are talking about audits and not
5 re-counts?

6 **Q.** I'm talking about the audit.

7 **A.** So your vote is being considered in the audit because the
8 human readable text is what is being considered. But if the QR
9 code was different, then the actual initial tally that the
10 elections officials would have would be different from your
11 vote, from your human readable vote.

12 **Q.** Does your answer there presume that the text, the human
13 readable text is what you -- matches what you meant to vote?

14 **A.** Yes.

15 **Q.** Okay. So in that case, your vote would not have been
16 counted in the original vote; correct?

17 **A.** Correct.

18 **Q.** Now, you testified that you and the organization want
19 robust audits?

20 **A.** Correct.

21 **Q.** Now, audits -- what does an audit check for?

22 **A.** The audit checks that the correct winner was the one who
23 was supposed to win.

24 **Q.** Is it possible for your vote to not count in an election
25 but for the correct winner to still win?

1 **A.** Sure.

2 **Q.** And how could that happen?

3 **A.** If there is such a huge -- the larger the margin of
4 victory, the less each individual vote that could have been
5 wrong is going to matter. So in a small, let's say, city
6 council race that could be decided by one vote, that one wrong
7 vote would matter a lot.

8 But in a presidential election that is a landslide win,
9 then one wrong individual vote I think won't -- wouldn't count
10 that much.

11 And, again, the audit would verify whether, you know,
12 enough votes were counted.

13 **Q.** So when you testified about the importance of voting in
14 your direct, does that pertain to the importance of casting
15 your individual vote or does it pertain to the outcome being
16 correct?

17 **A.** It pertains to the outcome.

18 **Q.** Does it pertain to the outcome of the election or -- your
19 election preference, or does it pertain to your individual vote
20 being counted?

21 **A.** The election outcome.

22 **Q.** Okay. And then let's see.

23 Mr. Bedard asked you about if you got a BMD ballot that
24 had an error on it --

25 **A.** Yes.

1 Q. -- and you spotted the error --

2 A. Yes.

3 Q. -- wouldn't it be a fix for you simply to get another BMD
4 ballot.

5 And I think there was a little bit of confusion on that.
6 So let me ask you.

7 If the error is not of your making but is the making of
8 the BMD --

9 A. Yes.

10 Q. -- does getting another BMD ballot fix that error?

11 A. No.

12 MR. MCGUIRE: Thank you. Nothing further.

13 MR. BEDARD: Just a few. Just a few short questions,
14 Your Honor.

15 THE COURT: That's fine.

16 RECROSS-EXAMINATION

17 BY MR. BEDARD:

18 Q. Ms. Nakamura, you don't have any evidence that your vote
19 has ever been incorrectly counted; correct?

20 A. Correct.

21 Q. Okay. No evidence that the QR code, when you have voted,
22 in the times that you have voted on the BMD, has been anything
23 different than what was -- let me rephrase that. I'm sorry.

24 You don't have any evidence that in the times that you
25 voted on the BMD that the QR code on your ballot has been

1 counted any differently than what was listed in your printed
2 out ballot; right?

3 **A.** Right. I have no evidence.

4 MR. BEDARD: I think that's it, Your Honor.

5 THE COURT: Thank you. All right.

6 MR. MCGUIRE: Nothing further. The witness is
7 excused.

8 THE COURT: All right. Thank you very much.

9 THE WITNESS: Thank you.

10 THE COURT: It is five of --

11 MR. BEDARD: Your Honor, I would raise -- sorry. I
12 apologize. One thing. Because Ms. Nakamura is not a party
13 witness. We would ask, again, just for an instruction about
14 sequestration for her continuing.

15 Again, we don't necessarily expect to call her back.
16 But we will know within the next week.

17 MR. MCGUIRE: Just she has not been subpoenaed, and
18 so we were actually going to ask that she be allowed to sit in
19 and watch the rest of the proceedings.

20 MR. BEDARD: Maybe we can confer during the break.

21 THE COURT: All right. Why don't you do that.

22 All right. I see the clock as usual is running slow.
23 So it is 12:57, at least according to what I have. So why
24 don't we get back at 1:45 P.M. Thank you.

25 COURTROOM SECURITY OFFICER: All rise. Court will be

1 in recess until 1:45 P.M.

2 (A lunch break was taken.)

3 THE COURT: Counsel, can you tell me who your next
4 witnesses are and who you think you're going to reach today?

5 MR. OLES: Judge, I'm going to be proceeding with
6 Mr. Ricardo Davis next.

7 THE COURT: Okay. Thank you.

8 MR. CROSS: Additionally, Your Honor, we will have
9 Mr. Hamilton, former chief information security officer for the
10 Secretary of State; Mr. Harvey, chief -- or the former state
11 superintendent -- election superintendent, director of
12 elections; Mr. Sinners, current spokesperson for the State. I
13 think he may be the head of communications. And then
14 depositions.

15 THE COURT: And depositions. Okay.

16 Are you planning to play them, or are you just
17 submitting them?

18 MR. CROSS: We were going to play them. I think they
19 run anywhere from about 8 minutes to 25, but they're short.

20 THE COURT: As a total, or eight to -- how many --

21 MR. CROSS: Each clip runs from 8 to 25 -- and there
22 are how many clips total?

23 It is about 76 minutes total.

24 THE COURT: Okay.

25 MR. TYSON: And, Your Honor, when we get to that, we

1 were just going to take the position that you can watch the
2 videos or read the transcripts as appropriate instead of taking
3 up court time. But we can have the conversation whenever we
4 get to that point.

5 THE COURT: Okay. Well, since we have still one more
6 plaintiff to do and we might have a repeat of other things, I
7 just wanted to say again, because this is a bench trial, we
8 don't have to argue about the -- you make a good objection,
9 explain the objection, and to the extent I allow it, the
10 testimony, it does not mean that I'm -- I will believe that it
11 is -- necessarily can be used. And so I'm just sort of
12 thinking that will sort of help us move forward.

13 And I assume Mr. Davis is not the last of the
14 plaintiffs to testify.

15 MR. CROSS: He is the last of the plaintiffs.

16 THE COURT: What about Ms. Curling? She was ill.

17 MR. BROWN: She was ill, and she is still ill. So we
18 are monitoring it, when we will be able to bring her in.

19 THE COURT: Okay.

20 MR. CROSS: Yeah. The last of the plaintiffs was
21 going to be Mr. Davis, and I've forgotten.

22 So Ms. Marks is still on the list. Ms. Missett,
23 Ms. Curling, and Mr. Schoenberg, of course, still has to come
24 back.

25 THE COURT: Okay.

1 MR. CROSS: Sorry.

2 THE COURT: And if we need to make any other
3 accommodations for anyone who is ill or Ms. Curling in some
4 manner, just we should discuss that later on just privately.
5 Okay?

6 MR. CROSS: Thank you, Your Honor.

7 THE COURT: So we're not trouncing out any medical
8 conditions in public.

9 Okay. All right. So, Mr. Oles, so you wish at this
10 point Ricardo Davis to be called?

11 MR. OLES: Yes.

12 THE COURT: All right.

13 MR. OLES: I would like to call Mr. Ricardo Davis to
14 the stand.

15 COURTROOM DEPUTY CLERK: Please raise your right
16 hand.

17 **(Witness sworn)**

18 COURTROOM DEPUTY CLERK: Please have a seat. If you
19 would state your name into the microphone and spell your
20 complete name for the record.

21 THE WITNESS: All right. This is Ricardo Davis.
22 That is R-I-C-A-R-D-O, last name D-A-V-I-S.

23 Whereupon,

24 RICARDO DAVIS,

25 after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. OLES:

Q. All right. Ricardo, could you please tell the Court where you currently reside.

A. I currently reside in Cherokee County, Georgia, just east of Woodstock.

Q. And how long have you lived in Georgia?

A. I have lived in Georgia since 1995.

Q. Okay. And could you give the Judge, please, the Court, a brief overview of your educational and professional experience.

A. Yes, I'll be glad to.

I have a Bachelor of Science in chemistry with a minor in computer science from the University of Arkansas. I have a master's degree in analytical chemistry from Texas A&M University.

From there, I went to work as a research scientist with Westinghouse for a few years, then transitioned to a career in information systems beginning with Hewlett Packard, and this will mark my 29th year as an information technology professional.

Q. Okay. Ricardo, is voting important to you?

A. Absolutely important.

Q. Why is it?

A. As a matter of historical context, I grew up in Little Rock, Arkansas. I could ride my bicycle to Central High

1 School.

2 My parents and my dad's siblings in particular impressed
3 upon me strongly the need to not just make sure that you could
4 cast a ballot but make sure that the elections from the stem to
5 stern were conducted with integrity.

6 **Q.** Okay. Now, do you personally vote in every election?

7 **A.** I make it my point to vote in every election I can.

8 **Q.** How many years do you think you've been voting now at this
9 point?

10 **A.** At this point, we're probably looking at a little over 40
11 years.

12 **Q.** Now, obviously, this case involves the Dominion system.
13 Have you voted using the Dominion system?

14 **A.** I have both voted with the mail-in ballot as well as --
15 most recently in 2022. Because I missed the deadline for the
16 request, I actually did use the BMD.

17 **Q.** All right. Now, have you also voted in person?

18 **A.** That is when I used the BMD, yes. I voted in person.

19 **Q.** And do you have -- have you also used the old -- prior to
20 this case started with the old Diebold system?

21 Did you also vote using that?

22 **A.** A few times I did use the Diebold system. And in
23 particular, I was part of the implementation team in Cherokee
24 County to actually deploy the Diebold DRE systems in the
25 county.

1 Q. Okay. Do you have a favorite method of voting?

2 A. Yes, I do have a particular method of voting that I favor,
3 and that is when I can use a hand-marked paper ballot.

4 Q. And why is that important to you? Why is that your
5 favorite?

6 A. Well, given the current landscape in terms of how we
7 conduct our elections in Georgia, I have more confidence that
8 my voter -- my vote selections can be audited with that ballot.

9 Q. Okay. And that auditing is important to you?

10 A. Absolutely, yes.

11 Q. And why is that?

12 A. Well, it is important to me because if you cannot audit
13 the election, then you really have no ability to maintain that
14 the election itself is honest.

15 Q. Now, obviously, you are a plaintiff in this case before
16 the Court now?

17 A. Yes, I am.

18 Q. How far back does your interest and concern about election
19 systems go?

20 A. It goes all the way back to the late '90s, as a matter of
21 fact. I was a part of an organization called the Coalition for
22 Voter Choice. We did lobby the state legislature with regard
23 to election-related matters.

24 And then when I met my cofounder at VOTER GA, Garland
25 Favorito, he is the one that really got me connected with the

1 national network of experts that were looking into the now
2 coming into common use, the electronic voting systems that were
3 being deployed in the early 2000s.

4 **Q.** Now, obviously, this case involves the technical details
5 as well as the manner and method of implementation of the
6 current voting system in Georgia.

7 Have you personally been involved with working at the
8 polls?

9 **A.** Yes, I have.

10 **Q.** And what have you done?

11 **A.** I have been a poll worker as well as a poll watcher, and
12 again, as I noted earlier, I was also involved in the setup
13 of -- at the polls.

14 **Q.** So you've actually observed voters in the polls yourself?

15 **A.** Yes, I have.

16 **Q.** About how many hours would you say you've spent in the
17 polls?

18 **A.** Oh, I'll take a wild stab at it. Maybe a couple hundred
19 hours.

20 **Q.** Okay. Have you had responsibility for managing people in
21 the poll locations?

22 **A.** I have had responsibility of managing poll watchers and
23 election monitors, but I have not served in a poll manager or
24 assistant poll manager capacity.

25 **Q.** Okay. So have you been involved with training those poll

1 watchers?

2 **A.** Yes, I have.

3 **Q.** Okay. And how many years have you been doing training?

4 **A.** I would say actively the last four years.

5 **Q.** Okay. Now, have you -- thinking about the time that
6 you've spent within the polls observing, can you recall
7 occasions where you have personally witnessed people having
8 some difficulty with the system?

9 And since we're here today for what we are, I'll confine
10 it to the Dominion ballot-marking device system.

11 MR. RUSSO: Your Honor, I'm just going to object on
12 the grounds of speculation.

13 THE COURT: All right. Well, I'll let him proceed,
14 and we'll determine whether it is speculation or something he
15 has observed.

16 BY MR. OLES:

17 **Q.** My question was: Have you personally observed situations
18 where you believe a voter is having difficulty with the system?

19 **A.** I personally have not.

20 **Q.** Okay. Now, you've been in court since the beginning, the
21 last couple of days, and you've heard various witnesses that
22 have come up here express their reservations and concerns about
23 the current BMD system; correct?

24 **A.** That's correct.

25 **Q.** Would you say that by and large you share those same

1 concerns with those other witnesses?

2 **A.** Absolutely, yes.

3 **Q.** Can you think of anything that has been expressed in the
4 last several days that you do not agree with?

5 **A.** I cannot.

6 **Q.** Okay. Now, before we go on here today, even though you
7 have a pretty fair background in technology and electronics,
8 you are not here today claiming to be an expert in any way;
9 correct?

10 **A.** That's correct.

11 **Q.** All right. So your testimony here today is based upon
12 your experience; correct?

13 **A.** That's correct.

14 **Q.** Thank you.

15 Ricardo, are you concerned that the voter selections that
16 the current system actually tabulates that is using -- from the
17 QR code are not verifiable to you as a voter?

18 **A.** Yes, that is a major problem I have with the current
19 system.

20 **Q.** Okay. And do you have also other concerns about the
21 manner in which the tabulators and the servers function within
22 that system?

23 **A.** Yes, I do.

24 **Q.** Okay. And as a member of the -- originally a member of
25 the Coalition plaintiffs in the case, you sought to declare the

1 Dominion BMD system constitutionally deficient, enjoin the
2 State from using the system, and prohibit the State from
3 enforcing any laws requiring use of the system.

4 Has that changed at all?

5 MR. RUSSO: Objection just to the leading questions
6 he's asking. He can, of course, ask his client what he wants
7 to do and what litigation he has been involved in.

8 THE COURT: I think he asked it this way to make it
9 shorter.

10 But go ahead and just ask a more open -- what did you
11 seek to do?

12 BY MR. OLES:

13 **Q.** Ricardo, what are you asking the Court -- what are you
14 here today asking the Court to do about this system?

15 **A.** If it would please the Court, I am here to ask the Court
16 to find, just as she found with the Dominion DREs, that you
17 would do the same with the current Dominion BMD systems.

18 THE COURT: Okay. So the DRE wasn't a Dominion
19 system, but you mean --

20 THE WITNESS: Diebold.

21 THE COURT: The Diebold system.

22 THE WITNESS: Thank you.

23 BY MR. OLES:

24 **Q.** Now, Ricardo, before I ask you specific questions about
25 your concerns, I want to ask you a little bit about VOTER GA.

1 What is VOTER GA?

2 **A.** VOTER GA is an acronym for Voters Organized for Trusted
3 Election Results in Georgia. It's a 501(c)(3) nonprofit.

4 **Q.** And when was it formed? Do you know?

5 **A.** This was formed in 2006.

6 **Q.** Were you a founding member?

7 **A.** Yes, I am.

8 **Q.** Okay. And what is the purpose of that organization?

9 **A.** That purpose -- the purpose of the organization is to
10 assist in educating citizens, stakeholders in Government,
11 et cetera, with regard to elections and election systems to
12 help with advancing legislation to promote the common good of
13 the electorate with regard to our elections, and also, when
14 necessary, to involve ourselves in litigation.

15 **Q.** And so you are sort of running ahead of my next question
16 which is going to be: What kinds of activity does VOTER GA
17 engage in?

18 **A.** Okay. Well, we engage in research. We engage in
19 providing studies. So these would be professional studies that
20 are used and distributed in the election systems community.

21 We also -- when we receive reports of issues that are
22 happening in various elections, we will determine whether or
23 not we will get involved in investigating -- and we do
24 investigations -- into the circumstances of any complaints that
25 we receive from voters or others.

1 And we also, as I noted earlier, when the opportunity
2 presents itself where we can advance what we feel are favorable
3 conditions for the voters and for the Government, we will
4 engage in litigation to advance the cause.

5 **Q.** Okay. Now, how does VOTER GA receive notice of issues
6 that it might be inclined to investigate further?

7 **A.** Well, that would primarily come from our supporters.

8 **Q.** Now, what kinds of things does VOTER GA do if it
9 determines to -- well, let me ask this.

10 How do you determine if it is an issue that merits further
11 investigation?

12 **A.** Well, first of all, what we will do is we will actually
13 review the information that someone brings to us for its
14 veracity. In other words, it has to hit a certain standard as
15 to, is the claim legitimate?

16 And if the claim is legitimate, then we will decide
17 whether or not we are going to essentially expend time,
18 effort -- time and effort towards getting to the bottom of the
19 issue.

20 **Q.** Now, how many reports do you think the VOTER GA has
21 considered over its existence?

22 **A.** I would say a couple dozen.

23 **Q.** Okay. And during that time, you have initiated, other
24 than this litigation, other court cases?

25 **A.** Yes, sir.

1 Q. Okay. And do you have an estimate of how many cases that
2 VOTER GA has either -- well, has been involved with one way or
3 another?

4 A. Clarifying question.

5 Are you speaking of we're the organization in its capacity
6 or individuals in the organization?

7 Q. Well, let's start with the organization.

8 A. Okay. So I would say maybe a handful or two where the
9 organization has been involved in an organizational capacity.

10 Q. Are there occasions where either you or, say, Garland have
11 been involved individually, rather than in the name of the
12 organization?

13 A. Oh, now that would be dozens.

14 Q. Now, I would like to ask you a few questions about your
15 experience with the Dominion system that is at issue here.

16 Do you have concerns that the Dominion system is not
17 reliable, accurate, or constitutional?

18 A. Yes.

19 Q. Okay.

20 A. I do have concerns.

21 Q. Can you briefly -- just talking at a high level -- what
22 those concerns are?

23 A. First of all, high on my list is whether or not the system
24 actually meets the standard of statute and regulations of the
25 State of Georgia. One of the key findings of this Court has

1 been that in particular, the BMD situation that we have right
2 now does not, and for me, that is a big blocker.

3 **Q.** Okay. What other -- what are your other issues besides
4 whether it is legally compliant?

5 **A.** My observation over now a couple of decades with how
6 things are handled with what are essentially very large
7 information system projects.

8 If you think about the amount of equipment that is being
9 deployed all across the state and needs to be actively managed
10 and not just deployed and left to be, but it has to be actively
11 managed to make sure that it is operating correctly and that
12 there are no threats against the system, I have been
13 discouraged at what I would call the duty of care of the State
14 of Georgia with regard to the systems.

15 **Q.** Okay. Let me ask you a few specifics.

16 Are you concerned, for example, that the system under
17 certain circumstances may produce wrong election results?

18 **A.** Yes, I am.

19 **Q.** Okay. Was VOTER GA involved in some manner with an
20 incident that took place in DeKalb County in 2022 that involved
21 allegations that it did not result in a proper count?

22 **A.** Yes, we were. We actually did some investigations, along
23 with a lot of other people, with regard to what actually
24 happened there in DeKalb County. I'll just leave it at that.

25 Any other questions?

1 Q. Now, how did you become aware of that situation?

2 A. The news.

3 Q. Okay. Are you aware of how the problem was discovered?

4 A. Yes, I am. I'm aware of the problem. It was discovered
5 by --

6 THE COURT: I think that counsel seems to have an
7 objection, but --

8 MR. RUSSO: Well, my objection is going to be lack of
9 personal knowledge to be able to testify to this. He knows
10 what he saw on the news, of course, but --

11 BY MR. OLES:

12 Q. Ricardo, the incident that we've just referred to, was
13 VOTER GA involved in investigating this incident?

14 A. Yes, we were.

15 Q. Were you personally involved in investigating that
16 incident?

17 A. I was involved in managing volunteers who were assisting
18 in data-gathering and creating analysis of what happened.

19 Q. Okay. Thank you.

20 So my question to you was: What is your understanding of
21 how that problem was discovered?

22 A. Okay. My understanding is that a candidate who was
23 running for a county commission seat, Ms. Spears, voted, as
24 well as her husband, in her precinct, and when she looked, she
25 found out that she received no votes in her precinct.

1 MR. RUSSO: Objection, Your Honor. He lacks personal
2 knowledge to be able to testify to that.

3 THE COURT: Well, were you able to verify that
4 yourself, that she received no votes?

5 THE WITNESS: Again, we had some of our volunteers
6 actually pull the information through open records requests.

7 MR. RUSSO: Well, Your Honor, then it is hearsay that
8 he is basing it on, so it is still objectionable.

9 THE COURT: Well, is this a matter of public record?

10 MR. OLES: Yes, Judge, if he was able to get an open
11 records request on it, certainly.

12 THE WITNESS: Yes.

13 MR. RUSSO: Well, Your Honor, we don't have those
14 documents, so --

15 THE COURT: Well, I mean, either it is in the State
16 records or not.

17 MR. RUSSO: I don't know. I haven't --

18 THE COURT: Well, I will allow the plaintiff an
19 opportunity to point me later on to where it is reflected in
20 the public record because I think I have -- that is a whole
21 other issue if it has already been in the public realm.

22 BY MR. OLES:

23 Q. Ricardo, again, your understanding from the investigation
24 that VOTER GA conducted, you mentioned that a candidate and her
25 husband were not listed as being voted, but it just involved

1 two votes.

2 Is that what we're talking about?

3 **A.** No. What we found was that there was a catastrophic error
4 in the tabulation of the results.

5 **Q.** Okay. And do you know the extent of that error?

6 **A.** Excuse me.

7 The extent of the error was that on re-count conducted by
8 the county, she was shorted approximately 3,000 votes.

9 MR. RUSSO: Your Honor, he's just speculating about
10 this, what this catastrophic error might be. This is -- he has
11 no personal knowledge to be able to testify to some
12 catastrophic error.

13 THE COURT: Well, I don't know what he has. I guess,
14 you can do what you need -- try to supplement this either
15 through the witness' testimony or through other evidence and
16 supplement it through the public record, but disclosing
17 whatever disclosures there were by the DeKalb County Government
18 of the elections.

19 MR. OLES: Judge, we'll do that.

20 BY MR. OLES:

21 **Q.** Ricardo, are you aware of whether or not the county
22 attempted to rerun the results?

23 **A.** Yes, I am.

24 **Q.** Are you aware of what the result of that process was?

25 **A.** The machine re-count produced the same results.

1 THE COURT: The 3,000 or the zero?

2 THE WITNESS: The zero for her precinct.

3 BY MR. OLES:

4 Q. Are you aware also of whether or not there were votes that
5 were not counted at all in that event?

6 A. There were approximately 1,800 votes that were not
7 counted.

8 MR. RUSSO: Your Honor, again, I'm just going to
9 object. He said he wasn't even involved in this investigation
10 that his organization conducted, so he doesn't -- he doesn't
11 have any personal knowledge.

12 THE COURT: I thought he said he was managing the
13 volunteers who were collecting data and creating an analysis --

14 THE WITNESS: That's correct, Your Honor.

15 THE COURT: -- so it wasn't like it was just separate
16 and apart from him. I mean, we've got issue here about the
17 data being reported, and I will let counsel supplement it, but
18 it doesn't mean that he didn't have any involvement.

19 But I note your objection, and either they are able
20 to supplement this with appropriate data, or they can't. And
21 either the data is there or it is not, or the succession of
22 data reports is there or it is not.

23 BY MR. OLES:

24 Q. Now, Ricardo, are you aware of whether or not the
25 Secretary of State became involved in that incident?

1 **A.** I'm not aware that the Secretary of State's office took
2 any action in that event.

3 **Q.** Okay. Are you aware of, as we stand here today, whether
4 or not the cause of that miscount has ever been fully
5 determined?

6 **A.** The root cause of, in particular, the lack of counting of
7 18,000 [sic] votes has not been determined.

8 **Q.** 1,800?

9 **A.** 1,800.

10 **Q.** All right. Are you aware of whether or not the Secretary
11 of State has published any information on that event?

12 **A.** I'm not aware.

13 THE COURT: Tell me again the named county official
14 who was being voted on.

15 THE WITNESS: Michelle Spears.

16 THE COURT: Michelle Spears.

17 And do you know if Michelle is with two Ls or one?

18 THE WITNESS: I believe it is two.

19 THE COURT: That is fine.

20 BY MR. OLES:

21 **Q.** And, Ricardo, I should have asked this before, but VOTER
22 GA, part of what it does, does it monitor information that is
23 produced by the Secretary of State commenting or making
24 announcements on issues such as this?

25 **A.** Yes, we do.

1 Q. Okay. So when you say that you're not aware of anything,
2 you have not seen anything come from the Secretary of State
3 attributing whatever was the cause of this incident; correct?

4 A. In particular, this particular aspect that we were
5 discussing, I have not.

6 Q. Okay. Are you familiar with any incidents as a result of
7 your work with VOTER GA that involved claims of duplicate or
8 counterfeit ballots?

9 A. Yes, I am.

10 Q. Okay. Do you have some concern that the current system as
11 structured does not properly handle duplicate or counterfeit
12 ballots?

13 A. Yes.

14 Q. Okay. And what is the concern that you have?

15 A. Well, specifically, we investigated claims by senior poll
16 managers during the 2020 general election that several hundred
17 mail-in ballots were found, but there were anomalies with those
18 ballots. In particular, since they were mail-in ballots, they
19 should have been folded, but they had no fold marks.

20 In addition, the paper that was used for those suspect
21 ballots was not the same as the card stock used for others.

22 Another item that the senior poll managers reported was
23 that, again, if this was a mail-in ballot, it would have been
24 hand-marked by a voter. And the ballots that they observed
25 appeared to be machine-marked.

1 Q. And so do you have a concern then that the system is not
2 able to distinguish duplicate ballots?

3 A. My concern would not just be with the system itself, but
4 the administration of the use of the system did not properly
5 handle those ballots appropriately.

6 Q. Now, this issue that you are referring to in the 2020
7 general election, was this reported to -- well, which county
8 was this? Was it Fulton County?

9 A. This was Fulton County.

10 Q. Do you know, was this reported to the Fulton County
11 election officials?

12 A. Yes, it was.

13 Q. Do you know whether or not there was any -- have you
14 followed up on this to determine whether or not there was any
15 action taken by Fulton County as a result of that report?

16 A. We did not see Fulton County take any action with regard
17 to the reports by their senior poll managers regarding those
18 ballots.

19 Q. And have you seen anything from the Secretary of State's
20 office on this issue of processing counterfeit or duplicate
21 ballots?

22 A. I have not.

23 Q. Okay. Ricardo, have you been involved in one or more
24 incidents where it is alleged that there are votes that are
25 being cast that do not capture ballot images through the

1 system?

2 **A.** Yes, I am.

3 **Q.** All right. Can you describe for the Court what it is --
4 what VOTER GA has seen?

5 **A.** Okay.

6 **Q.** Well, let me back up.

7 And the Judge may already know this, but what is the
8 relationship between the cast vote records and the ballot
9 images?

10 **A.** Okay. So when the voting system scans your ballot, two
11 files are created. One is the image of the ballot and --

12 MR. RUSSO: Objection, Your Honor. This is
13 inadmissible lay testimony. He's talking about something that
14 requires specialized knowledge, even if he has observed the
15 process.

16 THE COURT: Well, why don't you testify what you know
17 about in your personal -- based on your personal experience in
18 voting --

19 THE WITNESS: Okay.

20 THE COURT: -- and knowing about -- and whatever you
21 may have personally observed.

22 THE WITNESS: I will do that.

23 As a result of the team's open records request, we
24 have found that in processing the ballots, two files are
25 created, an image file of the ballot and a cast vote record

1 which contains the votes of -- that were cast on the ballot.

2 BY MR. OLES:

3 **Q.** Okay. And so your understanding again, from your -- the
4 information that you have received through those requests, is
5 that -- how is it supposed to be, a one-for-one?

6 **A.** That's correct.

7 **Q.** Okay. Did VOTER GA receive some reports that there were
8 cast vote records that did not have attached ballot images?

9 **A.** That's correct. In Fulton County, 2020 election again,
10 there were roughly 17,000 cast vote records that had no
11 corresponding ballot image.

12 **Q.** Did VOTER GA follow up to try to determine what may have
13 been the cause of that?

14 **A.** We did.

15 **Q.** And what was your experience?

16 **A.** We got no information back as to the root cause of the
17 problem.

18 **Q.** Okay. Was the Secretary of State's office involved in
19 that?

20 **A.** I believe we reached out to the elections division
21 director regarding this particular problem. I don't believe
22 that there was any action taken.

23 **Q.** Okay. And as we stand here today -- or as you sit here
24 today before the Court, do you have an explanation or has an
25 explanation ever been given to you or VOTER GA about how it

1 could be that there were cast vote records without attached
2 ballot images?

3 **A.** We received no information from Fulton County Board of
4 Elections with regard to the problem and its root cause.

5 **Q.** Are you, as a result of your involvement with VOTER GA or
6 your personal experience, aware of any circumstances where the
7 Dominion system processed and reported altered results?

8 **A.** Yes, as a matter of fact. And again, this was through our
9 research and analysis of information obtained from Fulton
10 County that appeared -- no, excuse me. What we received in
11 terms of information metadata from Fulton County is that --

12 **Q.** Well, let me ask you this: The incident you are about to
13 describe, do you know which election it was?

14 **A.** This was the 2020 general election.

15 **Q.** Okay. Go ahead.

16 **A.** Okay. If memory serves me correct, about 104,000 ballot
17 images had timestamps that were incongruence with the
18 processing of the data.

19 MR. RUSSO: Objection, Your Honor. There is no
20 foundation for this.

21 MR. OLES: I can lay some additional foundation,
22 Judge.

23 BY MR. OLES:

24 **Q.** The information that you're describing --

25 MR. CROSS: My apologies. Just because we're all on

1 the clock here, can we get an explanation of the relevance of
2 any of this to the claims and defenses in the case?

3 THE COURT: Sure. Are you able to discuss that
4 briefly?

5 MR. OLES: Yes, Judge.

6 I think, as I understand the scope of what we're here
7 for in this case, as explained by the Court in the ruling on
8 summary judgment, that what we're here to do is to evaluate
9 whether or not there are constitutional deficiencies within the
10 system that is currently being used.

11 Now, obviously, the scope of this is not solely
12 limited to the BMD device itself. There are issues of audit
13 trails which go from the beginning of the ballot-marking device
14 all the way back to the county servers. There have been issues
15 of intrusions that have taken place in county servers which are
16 squarely in front of the Court.

17 All we are trying to do is to highlight for the Court
18 what the State has been saying -- the answer to what the State
19 has been saying all along, that we have no real evidence that
20 problems have occurred with this system and that we're -- what
21 we're talking about is simply theoretical.

22 VOTER GA, by virtue of its work, has that experience,
23 and that is what we're trying to put before the Court here
24 today, and we believe that is well-within the scope of what the
25 Court has laid out for this case.

1 THE COURT: Do you want to respond to that?

2 MR. CROSS: Just briefly, VOTER GA is not a witness.
3 Mr. Davis is, and we're hearing a lot of -- I concur with
4 Mr. Russo. We are hearing a lot of speculation and hearsay and
5 things that this witness cannot speak to.

6 And even as to what Mr. Oles just said, that there is
7 evidence before the Court of intrusions into -- you know, he
8 said the Dominion servers. There is no such evidence that I'm
9 aware of, so --

10 THE COURT: Well, other than --

11 MR. CROSS: -- I defer to the Court, but we're
12 spending a lot of time --

13 THE COURT: All right. You have already presented in
14 your opening statement --

15 MR. CROSS: Well, I guess it depends on what you -- I
16 thought he was talking about something different. The Coffee
17 County, for sure, so maybe that is what he meant. But I know
18 they have a theory with where there was a remote access. I
19 thought that is what he was talking about, but that may not be
20 it.

21 THE COURT: You know, I can't really parse that
22 exactly here. I think we have a somewhat uncomfortable
23 position that there was -- that -- obviously that this
24 plaintiff believed that he had additional information and a
25 scope of a claim that was not being fully represented by his

1 then-current counsel and determined that he wanted to have
2 separate counsel in December of this -- of '23.

3 So it is a little uncomfortable because we have --
4 obviously, there are issues and evidence that he wishes to
5 point to to support his contentions that are somewhat different
6 in a different scope than what the primary plaintiffs and their
7 counsel are introducing.

8 I'm going to try to allow them to present their
9 claim -- or his claim. I think you have -- because of the type
10 of evidence being referenced, though, and the fact that it
11 never was vetted through a summary judgment motion or through
12 any other process beforehand, it is a little -- it is a lot
13 more complex, and I don't know precisely what you -- what
14 you're relying on here because we don't have the documents.

15 I'm allowing the witness to testify, but I will say
16 that the -- in the absence of any kind of documents under this
17 context or public documents -- and that is why I asked about
18 the -- it is a little bit different with the candidate in
19 DeKalb County because there was, in fact, a determination made
20 that the count was botched and that there had to be a new
21 count. So that was something different in my mind than what I
22 have here.

23 So I am -- you know, I'll let you -- give you some
24 latitude so that your client, who clearly has been invested in
25 these issues for a long time, can present what he thinks is

1 appropriate, considering the hearsay issues, though, because it
2 may all be very much subject to basically that I can't consider
3 it because it is all hearsay without any other support --

4 MR. OLES: Okay.

5 THE COURT: -- or documentary support or data, and it
6 is -- just for the record, it is not necessarily -- it appears
7 not to be in any way the evidentiary theory of the other
8 plaintiffs as to the particular intrusions. There are many
9 commonalities in their positions, but not as to the actual
10 specifics here.

11 MR. OLES: Okay. Thank you, Judge.

12 THE COURT: I just state that for the record in case
13 it is being reviewed at a later point or in case there is any
14 media so that we make sure that everyone understands the
15 limitations here that we're operating under. Go ahead.

16 MR. OLES: Thank you, Judge.

17 BY MR. OLES:

18 Q. Ricardo, I was asking you about whether or not VOTER GA
19 had investigated any incidents involving claims of alterations
20 of ballots.

21 A. Yes.

22 Q. And can you explain what the nature of the report was and
23 what VOTER GA is yourself --

24 A. Okay.

25 Q. -- through yourself and your team?

1 **A.** Yes. What we were doing is we were analyzing, again, the
2 data created as part of the 2020 general election in Fulton
3 County.

4 **Q.** And when you say data, what are you referring to?

5 **A.** We were referring specifically here to the ballot images.

6 **Q.** And where did you obtain them?

7 **A.** From Fulton County Board of Elections.

8 **Q.** Okay. Go ahead.

9 **A.** When -- what we saw when we received the data is that
10 there were ballot images that were modified because we saw that
11 the modified timestamp had been changed and was significantly
12 different from the rest of the data that we received. In
13 particular, there were a little over 100,000 ballot images.

14 THE COURT: Did you see the ballots yourself, or did
15 other people see them?

16 THE WITNESS: What I saw was the metadata for all of
17 the files. So I could see the creation time and the last
18 modified time of the ballots, and what we saw was that in this
19 very large batch of over 100,000 ballots, they all had the
20 same, different from the rest of the batch, date and timestamp.

21 BY MR. OLES:

22 **Q.** So, Ricardo, what did that indicate to you?

23 And I realize you're not an expert here, but you've spent
24 how many years investigating election issues?

25 **A.** Oh, a couple of decades.

1 Q. Okay. In your experience, what did you take from that?

2 A. What I took from that would be something that somebody who
3 has a basic understanding of computers and computer files will
4 say, and that is something --

5 MR. RUSSO: Your Honor --

6 THE WITNESS: The change -- there had been a
7 change --

8 THE COURT: I'm sorry. Wait a second.

9 MR. RUSSO: This is expert testimony, and he has
10 already testified he is not an expert in election security. He
11 may have an IT background. He may even have helped assemble
12 the DRE machines or whatever he did back in 2002, but he cannot
13 testify to this.

14 THE COURT: I agree. I mean, I think it is beyond
15 the scope of his testimony. It is a little -- it is a much
16 higher threshold than what we have been dealing with some of
17 the witnesses giving some amount of their assessment of what
18 they were dealing with, but on a very practical level, not on
19 this level.

20 MR. OLES: All right, Judge. I'll move on.

21 BY MR. OLES:

22 Q. Ricardo, leaving that 2020 election behind, did VOTER GA
23 receive any reports of issues or anomalies around the 2022 U.S.
24 Senate election?

25 A. Yes, we did.

1 Q. Okay. Is there anything that particularly comes to mind
2 that you were involved in?

3 A. Yes. Some of our members reported that they saw an
4 anomaly in the reporting of the results for Herschel Walker in
5 the general election.

6 Q. And when you say an anomaly, can you describe that?

7 A. On election night, shortly before 10:00 P.M., it was
8 reported to us that there had been --

9 THE COURT: Well, it was reported to us, I'm not
10 sure -- I mean, is that double hearsay, triple hearsay? What
11 is the source of -- what was reported by whom?

12 THE WITNESS: Okay. Our supporters sent us
13 screenshots of Georgia Public Broadcasting's Twitter feed
14 basically ten minutes before the hour and then right after the
15 hour that showed a drop of over 20,000 votes for Herschel
16 Walker.

17 THE COURT: All right. That is a lot of different
18 layers of reporting. First of all, your folks, your members,
19 sent texts or emails with images of something that Georgia
20 public radio published that was still a report of somebody
21 else.

22 So I think that is too removed for purposes of at
23 least my consideration of it on the current record.

24 THE WITNESS: Judge Totenberg, as part of our vetting
25 of the information, we not only corroborated the fact that,

1 yes, what they had sent us was true, but we also went back to
2 the source, the Edison line feed. And we got confirmation
3 that, yes, what they observed was actually what was reported in
4 the Edison media line feed in that -- within that time period.

5 BY MR. OLES:

6 **Q.** And when you say Edison line feed -- and I don't -- with
7 respect to Judge Totenberg who has heard all of this for six
8 years, I don't know whether or not she understands what that
9 is.

10 **A.** Okay.

11 **Q.** Would you explain it.

12 **A.** Okay. So, essentially, the results that are reported from
13 the Secretary of State are fed to this service, and then from
14 this service, it is distributed to media consumers.

15 **Q.** Okay.

16 **A.** That would be a simple way of putting it.

17 **Q.** Okay. And so what you are saying is that the reports that
18 you were receiving from your supporters that came in was
19 consistent with what you later were able to determine was the
20 report through the Edison line feed?

21 **A.** We traced it to the source, and we found that it was
22 indeed true.

23 **Q.** Okay. Is this something that you took up with the
24 Secretary of State?

25 **A.** Yes, we did take it up with the Secretary of State's

1 office elections division.

2 **Q.** Do you know what -- whether or not the Secretary of State
3 took action or whether they responded to you?

4 **A.** I do not recall that they responded to that inquiry.

5 **Q.** Okay. To this day, have you received any kind of adequate
6 response about what may have been responsible for that apparent
7 change?

8 **A.** No, I have not.

9 **Q.** And do you have some concern then about the reporting as a
10 result of that unexplained anomaly?

11 **A.** I do have a concern, especially given that all the other
12 candidates in that race, their vote totals increased within
13 that roughly ten-minute time span of reporting. So out of the
14 three candidates, one of them had a little over 20,000 vote
15 decrease.

16 **Q.** Now, do you know whether or not -- did you -- did VOTER
17 GA, that is your team --

18 **A.** Yes.

19 **Q.** -- undertake any sort of follow-up inquiry to see what may
20 have -- whether or not that ever changed or was addressed?

21 What I'm asking is: Do you know personally whether or not
22 that was a final result that -- did it ever get addressed, or
23 was it changed?

24 **A.** I am not aware that it was changed.

25 **Q.** All right.

1 **A.** And it was not reported to me by any of our volunteers
2 that were working on this particular project that it had been
3 corrected.

4 **Q.** Ricardo, are you familiar with the security analysis
5 prepared by Dr. Alex Halderman dated July 1st, 2021?

6 **A.** Yes.

7 **Q.** Now, it has not yet, to my knowledge, been brought up
8 within this proceeding, but you've reviewed it?

9 **A.** Yes.

10 **Q.** Okay. If you knew -- and I'm going to have to handle this
11 as a hypothetical because it is not yet in evidence.

12 If you knew that Dr. Halderman claimed that there is no
13 practical method of pre-election or parallel testing that can
14 rule out malware-based fraud in the system, would you agree
15 with that statement?

16 MR. RUSSO: Your Honor, I think this is going to now
17 be lay testimony that he is relying on an expert to -- he has
18 not perceived anything, of course, and he is relying on expert
19 testimony that has not been admitted yet, which is scientific
20 knowledge. So I don't think he can be a conduit as a lay to
21 get that expert testimony in.

22 THE COURT: I agree.

23 MR. OLES: I'll move on.

24 BY MR. OLES:

25 **Q.** All right. Ricardo, the last issue that I would like to

1 pose some questions about has to do with the Coffee County
2 incident that has been brought up already within the case.

3 Was VOTER GA involved in investigating any of the alleged
4 intrusion into the Coffee County election server?

5 **A.** Yes. We had our team reach out and -- through open
6 records request to get data from the servers.

7 **Q.** Okay. Do you -- is that as a result of a report that had
8 been sent to -- made to VOTER GA as you have described?

9 **A.** If I remember correctly, that is true.

10 **Q.** All right. Do you recall what -- can you describe for the
11 Court what the efforts of VOTER GA, what you undertook to do?

12 **A.** Okay. Well, what we were doing was looking at the system
13 logs of the Windows server as well as the application logs of
14 the Dominion software.

15 **Q.** And how did you come to have that?

16 **A.** If I remember correctly, that was through an open records
17 request.

18 **Q.** Okay. And so what did you then do?

19 **A.** What we did was we looked at the activity that was
20 happening in the course of the election -- the 2020 general
21 election and then the runoff.

22 **Q.** Okay. And do you recall what you may have seen?

23 **A.** Yes. In particular, in 2021, there was evidence of
24 outside access to the system recorded in the log.

25 MR. RUSSO: Objection, Your Honor. This is, of

1 course, going to be expert testimony. I wasn't sure if he was
2 going into what he saw on the computer or just kind of what he
3 saw on videos of people going in and out of the building.

4 THE COURT: Okay. I think we just don't have an
5 adequate foundation. First of all, I don't know -- he believes
6 that -- he says -- the witness says, if I remember correctly
7 that this was through an open records request, but I'm not sure
8 that, in fact, it was from an open records request because I
9 don't know that you would -- he was able -- would have been
10 able to get all of these logs, first of all. And so it would
11 be -- I would need to have some more information about that.

12 But secondly --

13 THE WITNESS: Understood.

14 THE COURT: -- Mr. Russo's comment is correct, that
15 if he's interpreting what the logs indicate -- I realize that
16 the witness has considerable computer expertise, but he is not
17 testifying here as a lay -- as an expert witness, so I'm
18 uncomfortable with this.

19 It doesn't mean that you can't ask another witness
20 about this who is testifying in an expert capacity and use the
21 benefit of your client's knowledge to assist you in asking
22 questions, but I think to have him present this information
23 under these circumstances is not sufficiently in conformity
24 with either the Federal Rules of Evidence or have a foundation
25 in terms of my really knowing what he looked at and when.

1 MR. OLES: Okay. If it is appropriate, Judge, I
2 would ask the Court reconsider our prior request to have the
3 two additional witnesses testify within the case. I'm sure
4 that would -- we would be able to satisfy the Court concerning
5 the basis for this.

6 THE COURT: Well, I'm not going to reconsider it. I
7 don't think I see an adequate basis. You are free to
8 cross-examine the witnesses who are going to testify who have
9 looked at this information. And you are, of course, free to
10 consult with any of the individuals that you wanted to call so
11 you can pursue questions that you are particularly interested
12 in.

13 MR. OLES: Okay. Then that is all that I have for
14 this witness at the moment, Judge.

15 THE COURT: Okay. Thank you.

16 CROSS-EXAMINATION

17 BY MR. RUSSO:

18 Q. Hi, Mr. Davis.

19 How are you doing?

20 A. Doing mighty fine.

21 Q. Nice to meet you. I'm Vincent Russo. We have not met in
22 this case before, but it is a pleasure, and thank you for being
23 here today.

24 I've got a couple of questions just to follow up on from
25 your counsel's questions.

1 I think I heard you mention that you helped install the
2 DRE voting system --

3 **A.** The Diebold DREs, that's correct.

4 **Q.** What did you do exactly in that installation process?

5 **A.** So that was -- that involved the assembly in the warehouse
6 where we store those and then the transport of those systems to
7 the various precincts -- I didn't do all the precincts; I just
8 did a portion of them -- and then the initial setup of those
9 machines, which it was a bit of exercise. They were heavy.

10 **Q.** And you were employed by the county for this?

11 **A.** I was a contractor for the county.

12 **Q.** So not through the State of Georgia, though?

13 **A.** That's correct.

14 **Q.** And you followed all the requirements when you put
15 everything together to --

16 **A.** Oh, yes.

17 **Q.** -- specifications?

18 You didn't put any malware on the system, did you?

19 **A.** No, I did not.

20 **Q.** You mentioned that you have done a lot of training of poll
21 watchers --

22 **A.** Yes.

23 **Q.** -- is that right?

24 **A.** Yes.

25 **Q.** What kind of training do you do when you train a poll

1 watcher?

2 **A.** Okay. So what we do is, first of all, we help the poll
3 watchers understand the law with regard to their activity, and
4 then we provide them with -- well, if we do it with the video
5 training, then it is a little -- we can communicate a little
6 better in terms of what they can and cannot do at the polling
7 place.

8 **Q.** Does your training include telling them not to look at
9 voters' screens?

10 **A.** Yes.

11 **Q.** Okay. And does your training involve telling them what to
12 do if they see a machine malfunction?

13 **A.** Yes.

14 **Q.** What do you tell them to do?

15 **A.** Well, they are to report it.

16 **Q.** To who?

17 **A.** Well, depending on the team, the responsible team manager
18 that is actually gathering the data.

19 **Q.** Okay. Not to the poll work -- excuse me, to the poll
20 manager?

21 **A.** It would be the responsibility of the individual that is
22 actually receiving the information as to whether it is
23 something that needs to rise to the occasion that the poll
24 manager needs to be informed. We don't want to unnecessarily
25 burden the poll managers.

1 Q. And do you-all keep records of what is reported through
2 your organization?

3 A. Yes.

4 Q. And do you have records of machines malfunctioning in
5 Georgia?

6 A. Yes, we do.

7 Q. Have you -- what do those reports say? Do you know?

8 A. What I'm in particular recalling was some of the work that
9 we did in 2021 in the municipal elections, but I can't recall a
10 specific incident. If counsel needs me to provide some of
11 those reports, I can provide that.

12 Q. Oh, no, you don't need to do that. We've already gone
13 through discovery in this case.

14 But you said -- so shifting gears, you said that you did
15 vote on a BMD, though; right?

16 A. I did.

17 Q. And that was in 2022?

18 A. That's correct.

19 Q. Runoff election?

20 A. Yes.

21 Q. And what was it? The -- do you recall how many races were
22 on that ballot?

23 A. Not offhand.

24 Q. It was the U.S. Senate runoff, though; is that --

25 A. (Witness nods head affirmatively.)

1 Q. And you don't recall if there were any local races or
2 anything else?

3 A. No.

4 Q. So you went into the polling place.

5 You, what, gave them your photo ID; is that right?

6 A. Yes.

7 Q. They took your photo ID, checked you out?

8 A. Checked me in.

9 Q. This was your first time, of course, voting on a BMD?

10 A. On a BMD. I have observed it, but this was the first time
11 of me actually doing it.

12 Q. Was there any wait in line or anything like that?

13 A. Not in my precinct.

14 Q. So you got your card; is that right? And then you went to
15 the BMD?

16 A. Yes, I did.

17 Q. And you put the card in and the ballot popped up?

18 A. Yes.

19 Q. And you made your selections?

20 A. Yes.

21 Q. And when you made your selections, was there any kind of
22 delay on the screen or anything like that?

23 A. Not that I recall.

24 Q. Any kind of visual glitches with the BMD?

25 A. No.

1 Q. And so you selected your candidates; right? And the check
2 popped up; is that right?

3 A. Yes.

4 Q. And then you went to the review screen; right?

5 A. Yes.

6 Q. Did you review the votes?

7 A. Yes, I did.

8 Q. And then you had the opportunity to print your ballot;
9 right?

10 A. That's correct.

11 Q. And also at that time, you had the opportunity to rereview
12 your BMD ballot; right?

13 A. Uh-huh (affirmative). But I didn't.

14 Q. You didn't?

15 Okay. That is what I was about to ask you, if you did.

16 So you printed your ballot.

17 Did you review it after it printed?

18 A. Yes.

19 Q. Then you went and put it in the scanner?

20 A. Yes, I did.

21 Q. There were a lot of -- well, scratch that.

22 Now, I think I heard you mention earlier, and I think your
23 counsel mentioned it in his opening statement, something about
24 the Secretary's inaction.

25 Can you help explain, what do you mean by that?

1 **A.** This gets back to what I call the fiduciary duty to care.
2 For example, with regard to the most recent CISA report
3 regarding the systems that are currently in force, given the
4 critical nature of the system, in my opinion as an IT
5 professional, it would be incumbent upon the elections division
6 to do all they can to advance the mitigations that the federal
7 government provided to the State with regard to that particular
8 system.

9 **Q.** So is that one of your claims in this case?

10 **A.** That is not one of the specific claims in this case.

11 **Q.** And you mentioned the detection of counterfeit ballots;
12 right?

13 **A.** Yes.

14 **Q.** Did I hear you correctly, counterfeit ballots?

15 **A.** Yes.

16 **Q.** You have seen counterfeit ballots in Georgia?

17 **A.** I personally have not --

18 **Q.** Okay. You mentioned anomalies with mail-in ballots --

19 **A.** -- although we do have affidavits with regard to the poll
20 managers that observed those ballots that were suspect.

21 **Q.** Can you explain to me what you mean by counterfeit ballot?
22 I really don't understand that.

23 **A.** So again, for mail-in ballot, if that mail-in ballot is
24 returned, there are certain characteristics of that mail
25 ballot, number one, that it would have actually been folded.

1 If you have a mail-in ballot that hasn't been folded, then it
2 would be suspect. That is just one feature of what we were
3 looking at.

4 **Q.** So these were counterfeit mail-in ballots that you noticed
5 or that you had gotten --

6 **A.** That the poll managers noticed and that were reported to
7 us.

8 **Q.** And none of these were your ballot -- your ballot hadn't
9 been counterfeited?

10 **A.** That's correct.

11 **Q.** And you said it was reported to you by a senior poll
12 manager; is that right?

13 **A.** There were four, if I remember correctly, that were doing
14 the reporting. I know one of them personally.

15 **Q.** Was one of them -- was Suzi Voyles; is that right?

16 **A.** That's correct.

17 **Q.** You have never actually petitioned the Court in Georgia to
18 force the Secretary of State to -- you mentioned his duty of
19 care; right?

20 **A.** Uh-huh (affirmative).

21 **Q.** Are you talking about legal duty?

22 **A.** Can you clarify?

23 **Q.** I'm really trying to understand what you meant by his duty
24 of care.

25 **A.** Okay. Well, I'm thinking more of, you know, since I am a

1 member of a board of a number of nonprofits, so, for example,
2 with regard to the finances of an organization, I have a duty
3 to care to make sure that the accounting is correct, that it is
4 audited, et cetera, such that any -- in particular, from one of
5 the organizations, if anyone wanted to come and question the
6 accounting behind the reports that we're making on our IRS
7 Form 990, we can provide that information.

8 In other words, we are doing everything we can to make
9 sure that we are using standard accounting practices to make
10 sure that our finances are in tiptop shape.

11 In the information systems context, to me, that would
12 translate to following standard industry practices with regard
13 to the maintenance of the security of the systems that the
14 State runs.

15 **Q.** Okay. So you're not saying that there is a state law that
16 says, do X, Secretary of State --

17 **A.** That's correct.

18 **Q.** -- is not doing that?

19 **A.** That's correct.

20 **Q.** Okay. Are you still a member of the Coalition for Good
21 Governance?

22 **A.** I haven't been kicked out.

23 **Q.** Do they remove people?

24 **A.** I am not aware.

25 **Q.** Okay.

1 **A.** I'm still on the mailing list. Marilyn still winks at me.
2 **Q.** I won't get into that.
3 Are you also a member of Georgians for Verified Voting?
4 **A.** No, I'm not a member of Georgians for Verified Voting.
5 Although I do get their newsletter as well.
6 **Q.** I'm sorry?
7 **A.** I have received their newsletter in the past.
8 **Q.** You are the -- you said, the cofounder of VOTER GA?
9 **A.** Yes.
10 **Q.** And what does -- what does VOTER GA stand for?
11 **A.** Voter Organized for Trusted Election Results in Georgia.
12 **Q.** And you mentioned that VOTER GA investigates issues that
13 y'all receive complaints, I think you referred to them as?
14 **A.** Yes.
15 **Q.** And --
16 **A.** Or we evaluate as to whether or not it is something that
17 rises to the level of us getting involved, and then we do.
18 **Q.** You said if it was legitimate and met a certain standard;
19 right?
20 **A.** Correct.
21 **Q.** And you mentioned that -- you said you had maybe about two
22 dozen investigations?
23 **A.** Yes.
24 **Q.** Okay. And those investigations, have you ever
25 investigated anywhere a voter claimed that the BMD printout had

1 the names, the list of the people -- the candidates they voted
2 for that was incorrect from what they selected on the screen?
3 Does that make sense?

4 **A.** So you are basically saying that a BMD actually printed a
5 ballot selection summary that was different than what the voter
6 actually created --

7 **Q.** That is right.

8 **A.** -- or pushed into the BMD?

9 **Q.** Sure.

10 **A.** I can't think of one from VOTER GA right offhand.

11 **Q.** Let's talk about -- briefly just about some of your
12 efforts to end the use of voting machines in Georgia because
13 you have a long history of that; right?

14 **A.** Yes, I'm somewhat familiar.

15 **Q.** I figured you might be.

16 Were you involved in VOTER GA's lawsuit in 2021 against
17 the State of Georgia over the voting machines?

18 THE COURT: Which case?

19 MR. RUSSO: The *VOTER GA v. State of Georgia* that
20 went up on the Court of Appeals.

21 THE COURT: Why are we going there? I'm not sure why
22 we have to deal with another lawsuit that isn't --

23 MR. RUSSO: Sure. So what I was getting, Your Honor,
24 is ultimately at this -- the voting system is his policy
25 preference, and he has tried to go to change that policy

1 preference through the courts, through letters to the Secretary
2 of State for --

3 THE WITNESS: Through legislation, et cetera.

4 MR. RUSSO: -- and re-reviewed and asked to
5 reevaluate the machines even; right?

6 THE WITNESS: Yes.

7 MR. RUSSO: Back in 2020.

8 THE COURT: Well, that's fine. But why don't you
9 just get him to agree or not agree with your summary, and we
10 don't need to go through any litigation he has been involved
11 with in the past.

12 That seems like not fair to other plaintiffs that are
13 here from the case and also not relevant.

14 MR. RUSSO: Yes, Your Honor. That is not a problem
15 at all.

16 BY MR. RUSSO:

17 **Q.** So you, of course, have tried to change -- get the voting
18 machines in Georgia thrown out in several different lawsuits;
19 right?

20 **A.** My desire is that if we're going to have an electronic
21 voting system that it is compliant with state law. My policy
22 preference would be that we use hand-marked paper ballots.

23 **Q.** And you said that it is complaint with state law.

24 Which laws do you contend it is not compliant with?

25 **A.** The ballots that are accumulated and counted on the ballot

1 selection summary for in-person voting, can a human verify the
2 votes that are on that ballot selection summary?

3 **Q.** Okay.

4 **A.** I would contend not because what is actually accumulated
5 is not the human readable text.

6 **Q.** So --

7 **A.** The Secretary -- in particular, the Secretary of State,
8 what was it, a week ago, proffered in the news, Oh, well, let's
9 buy some QR code readers so that when the person votes, they
10 can actually hold up their ballot selection summary on an
11 in-person vote and confirm that, Oh, well, the scanner says
12 that these are the people I voted for.

13 **Q.** And so in that situation, is that something -- would you
14 then say the ballot is verifiable at that point?

15 **A.** That is an attempt, and I would think a very expensive
16 attempt, to solve a problem.

17 **Q.** I guess what I'm really trying to understand is where
18 the line is drawn for you in terms of what is a verifiable
19 ballot versus what isn't.

20 **A.** A human verifiable ballot means one that when I cast it, I
21 need no assistance to determine whether or not I have made the
22 selections that I have made.

23 **Q.** Okay. So not whether it was actually counted.

24 Is that what you are --

25 **A.** That's correct. In other words, again, if we're talking

1 about casting the ballot before it is tabulated, what I'm
2 focusing on is I want to be completely sure that once I have
3 that piece of paper and I'm about to take it to the scanner, it
4 actually reflects what I chose.

5 **Q.** Okay. So not whenever you put in the scanner and the
6 count for the number of ballots that have gone through goes
7 from, you know, 10 to 11?

8 That's not what you are saying?

9 **A.** That's correct. I'm focusing these comments specifically
10 on the first part of the process.

11 **Q.** And you would agree with me, the same is true with the
12 hand-marked paper ballot when it gets scanned; right?

13 I mean, you're an IT professional.

14 Of course, you understand how binary code works; right?

15 **A.** True.

16 **Q.** A scanned ballot gets converted into some data; right?

17 **A.** That's correct.

18 **Q.** And you don't know -- humans can't read that data, of
19 course; right?

20 **A.** I have had classes in a similar language. Yes, I can.

21 **Q.** Most voters can't read that data; right?

22 **A.** Yes.

23 THE COURT: All right. Let me just clarify.

24 If I understood your testimony -- and I may not have.
25 That is why -- your concern is that the voter be able to

1 actually -- this is the question. They see when they are going
2 to the -- into the voting booth, they see the ballot, and they
3 mark -- is your concern that you want -- when they hand
4 something to the -- is your concern about the QR code, which is
5 what you said originally, or was it some other concern?

6 THE WITNESS: Yes.

7 THE COURT: I know you have other concerns, but your
8 first concern was the QR code --

9 THE WITNESS: That's correct.

10 THE COURT: -- and said that is what is being used to
11 count the ballot?

12 THE WITNESS: Correct.

13 THE COURT: Okay.

14 MR. RUSSO: Sorry. I figured I would grab my water
15 while you were --

16 THE COURT: Okay. That's fine.

17 BY MR. RUSSO:

18 **Q.** Mr. Davis, you recall responding to some written discovery
19 in this case?

20 **A.** Yes.

21 **Q.** And you responded to some requests for admissions from the
22 State --

23 **A.** Yes.

24 **Q.** From the Secretary of State?

25 And in those requests, you were asked to admit that you

1 have no evidence of any widespread voter fraud in Georgia in
2 connection with the November 3rd, 2020, election.

3 Do you remember that?

4 **A.** Yes.

5 **Q.** And you admitted, right, that you had no evidence?

6 **A.** That's correct, and I still hold to that.

7 **Q.** And you also admitted that you have no evidence of any
8 malfunctions of any component of the election system that
9 impacted the presidential election that year in 2020.

10 Do you recall that?

11 **A.** Yes.

12 **Q.** You still believe that?

13 **A.** At this time, yes.

14 **Q.** And you admitted that you had no evidence of any
15 malfunction of any component of the election system that
16 impacted the outcome of any other elections held in that
17 election cycle; correct?

18 **A.** At this point, yes.

19 **Q.** And you still -- that is still your position?

20 **A.** Yes.

21 **Q.** Now, you also --

22 **A.** But I would have counsel note that especially given my
23 question and answers with my counsel, I do have questions now
24 which have not been answered.

25 **Q.** And you did -- you reviewed those responses before they

1 were made, though; right?

2 **A.** Uh-huh (affirmative).

3 **Q.** Mr. Davis, you're concerned about more than the QR code on
4 the Dominion systems; correct?

5 **A.** The question again.

6 **Q.** You're concerned about more than just the QR code?

7 **A.** Oh, yes.

8 **Q.** And what are all of those concerns?

9 **A.** Well, the integrity of the Dominion voting system and all
10 of its components, and then -- that would be one general
11 category, and then the second general category would be the
12 administration and the use of that system.

13 **Q.** And how do you believe that -- how do you believe that
14 impacts your vote again?

15 **A.** Okay. I was going to give a work analogy. I work for
16 CommonSpirit Health. It's one of the largest nonprofit
17 healthcare systems in the country. Computer security in
18 particular, you can think of it as, oh, well, you are just
19 making sure that there is no malware on the system, blah, blah,
20 blah. But if we are impacted by, let's say, a ransomware
21 attack, it requires a level of remediation that in some cases
22 could get down to impacting our level of care of the patients.

23 So the analogy is, is that the work that we put into
24 ensuring that the system is secure impacts the care of the
25 patients. By analogy, I'm going to assert that the level of

1 care to ensure that the systems that we are using are secure
2 impacts the voters.

3 **Q.** Give me one more second here, and I think I'm pretty close
4 to wrapping this up, Mr. Davis.

5 **A.** All right.

6 **(There was a brief pause in the proceedings.)**

7 BY MR. RUSSO:

8 **Q.** One more quick question.

9 You sought to have Secretary Raffensperger recalled back
10 in 2021; is that right?

11 THE COURT: Back in when?

12 MR. RUSSO: In 2021.

13 THE WITNESS: I was not personally involved in any
14 recall effort.

15 BY MR. RUSSO:

16 **Q.** Now, I want to show you what has been marked as
17 Plaintiffs' Exhibit 535.

18 **A.** And if I can clarify my statement, because when I was
19 actually personally contacted by individuals that were
20 organizing the recall and they were asking for my assistance in
21 organizing the recall, that was what I was responding to.

22 THE COURT: Because you declined to provide
23 assistance, or you agreed to give assistance?

24 THE WITNESS: Well, I declined to provide assistance
25 in particular because I realized that what it would take to

1 actually successfully recall a statewide official was way
2 beyond the scope of what these individuals had the capacity to
3 do.

4 BY MR. RUSSO:

5 **Q.** So you didn't sponsor a recall application?

6 **A.** I don't recall.

7 **Q.** I'll hand you what has been marked as Plaintiffs'
8 Exhibit 535 just for -- Mr. Davis, this is your voter
9 participation history.

10 You attached this, if you recall, to your declaration?

11 **A.** Yes.

12 **Q.** Do you recall this?

13 You printed it out from your My Voter page; is that right?

14 **A.** Yes.

15 **Q.** And it has your voter participation history.

16 It looks like your BMD votes are on the top of the list
17 right there; right?

18 **A.** That was the -- when I forgot to get my request for the
19 absentee ballot in on time.

20 **Q.** If you flip to the last page of the document -- and this
21 might just refresh your memory -- it says first a petition
22 name, September 17th of 2021, Secretary of State Raffensperger
23 recall application.

24 **A.** Yes.

25 **Q.** Does that help refresh your memory about sponsoring an

1 application?

2 **A.** Well, what I do believe this is, is -- I'm trying to
3 remember the name of the individual that was collecting the
4 signatures.

5 But yes, I did sign his little petition to say that we
6 wanted to recall Secretary Raffensperger. But that is all I
7 did.

8 **Q.** And you wanted him recalled because he supports
9 ballot-marking devices; right?

10 **A.** I go back to my earlier comment with regard to what I
11 consider a lack of duty of care on the Secretary.

12 MR. RUSSO: Okay. No further questions, Your Honor.

13 **(There was a brief pause in the proceedings.)**

14 THE COURT: I'm going to hand back this exhibit.

15 MR. RUSSO: I'm not putting it in.

16 MR. BROWN: Your Honor, Bruce Brown for the Coalition
17 plaintiffs. I have a very short discrete question to clarify
18 his testimony. He may have misspoken.

19 MR. RUSSO: And, Your Honor, I'm just going to go
20 ahead and object because your rule was that one attorney for
21 the plaintiffs' side gets to address witnesses.

22 THE COURT: Right. But I also said anyone could
23 clarify -- ask to clarify. So he says it is going to be short.
24 I'm going to hold him to that.

25 THE WITNESS: Hello, Bruce.

1 THE COURT: If you need to ask a question after that
2 to clarify what has been elicited, you are welcome to do so.

3 THE WITNESS: Thank you, Your Honor.

4 EXAMINATION

5 BY MR. BROWN:

6 **Q.** Mr. Davis, Bruce Brown. Good afternoon. I have one
7 question.

8 You said that you received a Windows log from Coffee
9 County for 2021.

10 Who did you get that from? When did you get it? And are
11 you sure you got the Windows log?

12 **A.** If I remember correctly, this was the Windows system log.
13 I personally did not receive it.

14 MR. RUSSO: I'm just going to object that he clearly
15 lacks the knowledge of this. He just said he doesn't recall.

16 THE COURT: Well, let him complete his answer.

17 MR. BROWN: Well, I want to know that he didn't have
18 it.

19 BY MR. BROWN:

20 **Q.** You've never seen it?

21 **A.** Oh, yes, I saw it.

22 **Q.** And it was the Windows log for what?

23 **A.** These were the logs for --

24 MR. RUSSO: Objection, Your Honor. That, of course,
25 calls for specialized knowledge of a lay --

1 THE COURT: No, it doesn't. To be able to say what
2 the logs are doesn't require specialized knowledge. To go
3 anything further probably would, but --

4 MR. BROWN: I have no intention of going further,
5 Your Honor. I just want to know what he got and who he got it
6 from.

7 THE WITNESS: Okay. So one of our volunteers on the
8 VOTER GA team obtained those logs, and I actually saw the logs,
9 actually a printout of the logs.

10 BY MR. BROWN:

11 Q. Who was your volunteer?

12 A. Now, that, I don't recall right offhand. I'm sorry,
13 Bruce.

14 Q. Was it the EMS server or the scanner, or which computer
15 was it from?

16 A. Oh, this was of the server, the EMS server.

17 MR. RUSSO: I'll ask one quick clarification.

18 THE COURT: Go ahead.

19 RECROSS-EXAMINATION

20 BY MR. RUSSO:

21 Q. Mr. Davis, sometimes do y'all have -- do y'all share
22 volunteers, VOTER Georgia, with other organizations sometimes?

23 A. Well, we don't necessarily control whether or not people
24 who volunteer for us volunteer for other organizations.

25 Q. Like the Coalition for Good Governance?

1 **A.** Yeah.

2 MR. RUSSO: Okay.

3 MR. OLES: I have one follow-up.

4 THE COURT: Okay.

5 REDIRECT EXAMINATION

6 BY MR. OLES:

7 **Q.** Ricardo, Mr. Russo asked you a question about all of your
8 concerns, and you responded to him, but I just wanted to ask
9 you this: Do your concerns also include whether or not an
10 election server can be -- or a scanner can be programmed to do
11 different things during an election?

12 **A.** So you're asking me that -- is that a concern of mine?

13 **Q.** Yes.

14 **A.** Yes.

15 **Q.** Okay. And is that based upon -- what is that based upon,
16 your concern? In other words, have you received reports
17 through VOTER GA? Have you --

18 **A.** Oh, yes. Well, in particular with regard to the re-count
19 for the 2020 general election and the presidential race, when
20 that re-count happened, there were 39 additional votes added to
21 the totals, and neither Coffee County nor Dominion could give a
22 reason as to what happened there.

23 MR. OLES: All right. Thank you.

24 THE WITNESS: You're welcome.

25 THE COURT: Just so that I'm clear, when you saw this

1 printout --

2 THE WITNESS: Log.

3 THE COURT: -- that somebody gave you, that was in
4 '21? 2021 or in '20?

5 THE WITNESS: Both.

6 THE COURT: 2020 and 2021?

7 THE WITNESS: Yes.

8 THE COURT: All right. Thank you.

9 MR. RUSSO: No further questions, Your Honor.

10 THE COURT: Okay. Why don't we take a five-minute
11 break.

12 Who is your next witness -- who is the plaintiffs'
13 next witness?

14 MR. FISHER: Harvey is going to be our next witness.

15 THE COURT: Harvey?

16 MR. FISHER: Chris Harvey.

17 THE COURT: All right. Five minutes.

18 COURTROOM SECURITY OFFICER: All rise. Court is in
19 recess.

20 **(A brief break was taken at 3:19 PM.)**

21 THE COURT: Have a seat.

22 Mr. Cross, do you want to call your next witness?

23 I'm sorry. We have something.

24 MR. OLES: May I approach briefly?

25 THE COURT: Yes. Of course.

1 MR. TYSON: Your Honor, Mr. Harvey is the courtroom.

2 Do we need to send him out for this?

3 I just want to make sure for sequestration purposes
4 if we needed Mr. Harvey to --

5 THE COURT: Who is in the courtroom? I'm sorry.

6 MR. TYSON: Mr. Harvey is, the next witness.

7 THE COURT: Okay. Well, why don't we excuse
8 Mr. Harvey for a second then.

9 MR. OLES: Judge, my client misspoke on an issue
10 about the logs.

11 THE COURT: Would you like to re-call him?

12 MR. OLES: I would.

13 THE COURT: I'm going to -- what counsel for
14 Mr. Davis asked is that he be able to re-call his -- as if on
15 recross, his witness because he said something was omitted that
16 he needs to address.

17 So I'm going to give him that courtesy, and it won't
18 take long, as I understand it.

19 THE WITNESS: That is correct, Your Honor.

20 THE COURT: Mr. Davis, you're still under oath.

21 REDIRECT EXAMINATION (Further)

22 BY MR. OLES:

23 **Q.** Mr. Davis, you were asked a question a little while ago
24 about having reviewed a Windows log --

25 **A.** Yes, an application log.

1 Q. -- you said that you had?

2 A. Yes.

3 Q. Is there -- having reconsidered that, is there anything
4 you would like to clarify about that?

5 A. Yes. I want to speak specifically regarding what I
6 thought was the application log. I went back and looked at the
7 email, and what I was looking at was specifically for the --
8 one of the central servers that is doing the accumulation. I
9 think it was the ImageCast server. It was that application
10 log.

11 Q. So you were actually looking at the Dominion ImageCast
12 central log?

13 A. That's correct.

14 Q. Okay. And not the Windows log?

15 A. That's correct.

16 Q. All right.

17 MR. OLES: Thank you, Judge.

18 MR. RUSSO: I'll just be quick, if that is okay, Your
19 Honor.

20 THE COURT: That's fine. Go ahead.

21 RECROSS-EXAMINATION (Further)

22 BY MR. RUSSO:

23 Q. Mr. Davis, how did you end up determining that or
24 remembering that you had misremembered this fact when you were
25 testifying?

1 **A.** I went back and looked at the email.

2 **Q.** Did you speak to anybody?

3 **A.** No. Like I said, I just went back and looked at the email
4 that had the PDF attachment with a log.

5 THE COURT: Okay.

6 MR. RUSSO: Okay. Thank you.

7 THE COURT: And that was for the central server?

8 THE WITNESS: Yes.

9 THE COURT: Not for the -- not specifically for --

10 THE WITNESS: For the operating system.

11 THE COURT: Any questions follow-up from --

12 MR. BROWN: Your Honor, may I have 30 seconds to
13 speak with --

14 THE COURT: Yes.

15 REEXAMINATION (Further)

16 BY MR. BROWN:

17 **Q.** Just a follow-up question on your testimony.

18 You said this was an S log?

19 **A.** No, I didn't say it was a S log. I just said it was a
20 log.

21 **Q.** A log?

22 **A.** Log file.

23 **Q.** And a log from what device?

24 **A.** This was the central image server, ImageCast.

25 **Q.** The central scanner or the --

1 **A.** Yes.

2 **Q.** Oh, the central scanner?

3 **A.** Yes.

4 **Q.** And who gave it to you, or who gave it to your
5 organization?

6 **A.** Well, one of the VOTER GA volunteers sent it to me.

7 **Q.** And you don't know who that was?

8 **A.** Good gracious.

9 Because when it was brought to my attention, I just went
10 through quickly, looked at the log. I didn't pay attention to
11 which individual sent it to me.

12 MR. RUSSO: Your Honor, I'm just going to -- I'm
13 going to object under 403. Frankly, this is entirely
14 prejudicial to the State. He doesn't even know who gave it to
15 him.

16 THE WITNESS: I can pull up the email and tell you.

17 BY MR. BROWN:

18 **Q.** When did you get this ICC log?

19 **A.** I know it was within the last month. I just don't
20 remember exactly the day.

21 **Q.** And what period of time was the log for?

22 **A.** We requested for 2020 and 2021, so the election in 2020
23 and the election in 2021, the runoff. And if I remember
24 correctly, what I was looking at in the email was for the 2021.

25 MR. RUSSO: I'm just going to object on foundation.

1 He's talking about we requested -- he doesn't know who
2 requested what, who sent him what. There is just a lack of
3 foundation here.

4 THE COURT: Well, I'm just going to take it under
5 advisement at this moment and try to chat with counsel later
6 about it, and we'll follow up as necessary --

7 THE WITNESS: Okay.

8 THE COURT: -- and follow up as necessary also with
9 Mr. Davis about it.

10 THE WITNESS: I'll be available.

11 THE COURT: Don't touch whatever you were looking at
12 for now. All right? Thank you. Thank you.

13 If we need to re-call you to continue this, we will.
14 Okay?

15 THE WITNESS: Okay.

16 THE COURT: Thank you very much.

17 MR. BROWN: Thank you, Your Honor.

18 MS. KAISER: Your Honor, we'll call Chris Harvey.

19 Your Honor, I would just like to clarify, this is an
20 adverse examination.

21 THE COURT: All right. Thank you.

22 COURTROOM DEPUTY CLERK: Please stand and raise your
23 right hand.

24 **(Witness sworn)**

25 COURTROOM DEPUTY CLERK: Please have a seat. If you

1 would state your name and spell your complete name for the
2 record.

3 THE WITNESS: Sure. My name is Chris Harvey. It is
4 C-H-R-I-S, H-A-R-V-E-Y.

5 MS. KAISER: Your Honor, may my paralegal approach to
6 provide a binder of documents we may use with the witness?

7 THE COURT: Yes.

8 MS. KAISER: Thank you.

9 Whereupon,

10 CHRIS HARVEY,

11 after having been first duly sworn, testified as follows:

12 CROSS-EXAMINATION

13 BY MS. KAISER:

14 Q. Good afternoon, Mr. Harvey.

15 A. Good afternoon.

16 Q. You previously served as elections director for the
17 Georgia Secretary of State; right?

18 A. I did.

19 Q. And you were in that role from July 2015 to July 2021?

20 A. Yes, ma'am.

21 Q. Prior to that, you were the chief investigator for the
22 Secretary of State; is that right?

23 A. I was.

24 Q. You served in that role from 2007 to 2015?

25 A. Yes, ma'am.

1 Q. So you spent approximately 14 years working on elections
2 in the Georgia Secretary of State's office; is that right?

3 A. Yes, elections and investigation. We worked on other
4 stuff, but yes, elections were part of that the entire time.

5 Q. Thank you.

6 You were the elections director during Georgia's
7 transition from the DRE to the BMD voting systems; is that
8 right?

9 A. That's correct.

10 Q. Before the BMD system was adopted, then Secretary of State
11 Kemp convened the SAFE Commission to study what equipment
12 should replace the DREs; is that right?

13 A. He did.

14 Q. And you spoke before the SAFE Commission, did you not?

15 A. I did.

16 Q. Through your participation, you were aware that Dr. Wenke
17 Lee was the only cybersecurity expert on the SAFE Commission;
18 is that right?

19 A. I know he was a cybersecurity. I think -- I don't know
20 the level of cybersecurity knowledge other people had, but I
21 think he was certainly the most preeminent in my mind.

22 Q. The most preeminent cybersecurity expert on the SAFE --

23 A. On the commission, yes, ma'am.

24 THE COURT REPORTER: You were talking at the same
25 time. Please repeat it.

1 MS. KAISER: Thanks.

2 BY MS. KAISER:

3 Q. I said, Dr. Lee was the most preeminent cybersecurity
4 expert on the SAFE Commission.

5 That is your recollection?

6 A. That is my understanding, yes, ma'am.

7 Q. You were aware that Dr. Lee was a proponent of hand-marked
8 paper ballots?

9 A. I believe that is correct.

10 Q. You don't know why Secretary Raffensperger selected an
11 election system that the sole cybersecurity expert on the SAFE
12 Commission objected to; right?

13 A. I don't know why Secretary Raffensperger chose that voting
14 system.

15 Q. And you don't know why the Secretary of State picked a QR
16 code system rather than one that tabulates human readable text;
17 is that right?

18 A. That is correct.

19 Q. Just before the 2020 election, the Secretary's office
20 implemented a software change to the BMDs to change how the
21 ballots were displayed.

22 Do you recall that?

23 A. Before the 2020 election?

24 Q. Yes, sir.

25 A. I remember an issue around the 2020 election with columns

1 being displayed. I don't remember if it was the general
2 election or the runoff, but I think there was an issue around
3 that time.

4 **Q.** And because of that issue, the Secretary's office needed
5 to implement a software change to the BMDs; is that right?

6 **A.** That is my understanding, yes, ma'am.

7 **Q.** Before that change was implemented, the Secretary's office
8 took the position that the Elections Assistance Commission
9 should certify that change as a de minimis change; is that
10 right?

11 **A.** That is my understanding of what happened.

12 **Q.** But you were not involved in that determination that this
13 was a de minimis change; is that correct?

14 **A.** Correct.

15 **Q.** It is fair to say that you wish there had been more
16 communication regarding elections within the Secretary of
17 State's office, isn't it?

18 **A.** At times, yes.

19 **Q.** When people met and sat around the table, tended to hear
20 new things, hear new perspectives, and see blind spots; is that
21 right?

22 **A.** Can you ask that again?

23 **Q.** Sure. It is your perspective that when people communicate
24 more, sit around a table, hear different perspectives from one
25 another, that you tend to identify blind spots; is that right?

1 **A.** That's correct.

2 **Q.** But that didn't happen very often in the Secretary's
3 office when it came to elections, did it?

4 **A.** It didn't happen with me a lot of times. Sometimes it
5 did; sometimes it didn't.

6 **Q.** While you were the elections director, after the polls
7 closed in an election, each county used USB drives to transfer
8 election data from the Dominion EMS to Georgia's election night
9 reporting system; is that right?

10 **A.** Yes.

11 **Q.** Before you left, you did not know whether counties would
12 reuse USB drives from election to election; right?

13 **A.** Correct. I wouldn't know what any one county was doing in
14 every case, no.

15 **Q.** You wanted to implement a policy against that type of
16 reuse of USB drives; isn't that correct?

17 **A.** I don't recall specifically advocating a policy.
18 Generally, I would have liked that. I think the cleaner you
19 can make it, the better. I don't specifically recall
20 advocating for that, but I may have.

21 **Q.** You were a proponent of sending the counties a new USB
22 drive whenever they got a package of election materials for a
23 new election; right?

24 **A.** That sounds familiar.

25 **Q.** But that didn't happen before you left the Secretary of

1 State's office, did it?

2 **A.** I don't believe so.

3 **Q.** When the BMD system was rolled out in 2020, you did not
4 instruct the counties not to use USB sticks that they had used
5 with the old DRE voting equipment, did you?

6 **A.** I'm sorry. Can you ask that again? I got -- you -- I got
7 confused with the negative.

8 **Q.** No problem.

9 When the BMD system was rolled out in 2020, you did not
10 instruct the counties to use US -- to not use the USB sticks
11 that they had used with the old DRE system with the new BMD
12 equipment; is that right?

13 **A.** I don't specifically remember whether or not I did that.
14 My recollection is that we wanted -- with the new system, we
15 wanted everything new as much as possible.

16 **Q.** But you never confirmed that all 159 counties stopped
17 using the USB drives that they had been using with the old DRE
18 system when the new BMD voting system was rolled out; isn't
19 that correct?

20 **A.** I don't believe I did.

21 **Q.** When you were elections director, each voter was issued a
22 voter card when they checked in at a polling place; right?

23 **A.** That's correct.

24 **Q.** And the voter card gets enabled on a device called a Poll
25 Pad?

1 **A.** That's correct.

2 **Q.** And then after the voter checks in, they take that voter
3 card and plug it into the BMD to get their ballot; right?

4 **A.** That's correct.

5 **Q.** Georgia's voter registration system at the time that you
6 were elections director was called eNet; is that right?

7 **A.** That's correct.

8 **Q.** And eNet was used with the old GEMS DRE system; correct?

9 **A.** It was.

10 **Q.** And the State continued to use eNet after the transition
11 to the BMD system; correct?

12 **A.** That's correct.

13 **Q.** You submitted a declaration in this case -- well, excuse
14 me.

15 Is it your position that the Georgia BMD system is
16 entirely new and separate from the voting system, the old GEMS
17 DRE voting system?

18 **A.** Is it my position --

19 MR. TYSON: Objection, Your Honor. I think that
20 requires specialized knowledge and expert testimony. I think
21 Mr. Harvey maybe could give his personal view of that, but I
22 don't think he can say specifically what the components do and
23 how they interact.

24 THE COURT: You can ask him to the degree he can
25 answer based on his training and experience in the department

1 and otherwise.

2 MS. KAISER: I'll try this a different way, Your
3 Honor.

4 BY MS. KAISER:

5 Q. Mr. Harvey, do you recall giving a declaration in this
6 case in November of 2019?

7 A. I remember giving declarations. I don't specifically
8 remember what I put in that declaration.

9 Q. And do you remember that declaration was under oath?

10 A. Every declaration is under oath.

11 Q. Do you recall providing in that declaration that the BMD
12 system was entirely new and separate -- an entirely new and
13 separate voting system from the GEMS DRE system?

14 A. As I sit here today, I don't recall writing that.

15 Q. Would it help to see your declaration?

16 A. Yes, ma'am.

17 Q. Okay.

18 MS. KAISER: Your Honor, may I approach the witness?

19 THE COURT: Yes.

20 MS. KAISER: Your Honor, would you like a copy?

21 THE COURT: Thank you.

22 MR. TYSON: Do you have the entire declaration to
23 give it context?

24 MS. KAISER: I'm sorry. We can get it to you.

25 MR. TYSON: This is just a single page.

1 MS. KAISER: Yes. I apologize for that.

2 Your Honor, we will provide the entire declaration.

3 THE COURT: If you need it printed, we can print it
4 here, but you probably all have so many gadgets that you can
5 too.

6 MS. KAISER: We can come back to this, Your Honor. I
7 apologize.

8 THE COURT: All right. That is fine.

9 BY MS. KAISER:

10 Q. We'll come back to that, Mr. Harvey.

11 A. Okay.

12 Q. You are aware that Fortalice Solutions conducted an
13 assessment of the BMD system in the fall of 2019; correct?

14 A. I remember Fortalice did something. I don't remember
15 exactly when.

16 Q. You were not involved in that assessment; is that right?

17 A. Correct.

18 Q. And you did not see a report from Fortalice?

19 A. I don't believe so.

20 Q. And you were -- even though you were elections director at
21 the time?

22 A. Yeah. I don't remember seeing a report from Fortalice.
23 That's correct.

24 Q. As of the time that you testified in this case in
25 September 2020, you were not aware of any remedial measures

1 that were taken as a result of that report; is that right?

2 **A.** I don't believe so.

3 **Q.** You were involved in the State's rollout of the BMDs in
4 early 2020; correct?

5 **A.** Yes, I was.

6 **Q.** You submitted several declarations to this Court on that
7 rollout process; correct?

8 **A.** I believe I did.

9 **Q.** The Secretary of State signed a contract with Dominion for
10 the BMDs in late July of 2019; is that right?

11 **A.** That sounds about right.

12 **Q.** And as of November 2019, so within about three months of
13 signing an agreement with Dominion, the State had accepted over
14 13,000 BMDs from Dominion.

15 Do you recall that?

16 **A.** I don't recall the timetable. I know that we were -- we
17 knew we had to get equipment into the State quickly. I
18 don't -- I wasn't really kept up to speed on a daily basis as
19 to how much was coming in.

20 **Q.** Please walk the Court through the process of rolling out
21 all of the BMD equipment to Georgia's 159 counties.

22 **A.** Well, I would start by saying that Gabe Sterling is the
23 manager of the rollout system, had a much larger role in that
24 than I did. I can say that -- are you asking for what I did or
25 the --

1 Q. Yes.

2 A. My role was largely to communicate to the counties to do
3 demonstrations, to answer questions, to provide them with
4 training opportunities, orientation, things like that.

5 And then as issues would come up from the counties or from
6 us to the counties, to reconcile those issues, usually with the
7 cooperation with Gabriel Sterling to fix any problems that
8 arose that we hadn't planned on, that is basically what I did.

9 Q. And to your recollection, when did you start training the
10 counties on the new BMD equipment?

11 A. I know that the first use was, I think, in September of
12 '19 in a pilot with six municipal elections.

13 And just to clarify, I didn't really do the training. I
14 didn't do the training. The training was done by Michael
15 Barnes and his team. So it would have been sometime before
16 that where they actually came to the -- the office that was
17 in -- I think in Kennesaw or Marietta. It was in Marietta, I
18 believe. And they actually got hands-on working with the
19 machines, seeing how they operated, operating the software,
20 things like that.

21 I can't tell you exactly when that happened, but I believe
22 it was before September or October of 2019.

23 Q. And when you say that the training began before September
24 of 2019, are you speaking solely about the -- I think you said
25 five or six counties that did a pilot program, or are you

1 speaking about all 159 counties in Georgia?

2 **A.** I think that was the first actual hands-on, like,
3 training, like this is how this machine works, this is how it
4 connects. I believe that was the first time it was done. I
5 think we had done some communication with the counties about
6 orientation into the system. But as far as what I would
7 consider actual training, I think that was really the first
8 hands-on training.

9 **Q.** And then the first election that the BMD --

10 THE COURT: I'm sorry. I'm still not clear.

11 Is that with the six counties that were in the
12 sample, or was that with all of the counties?

13 THE WITNESS: The hands-on was just the six.

14 THE COURT: Okay.

15 THE WITNESS: There was likely communication with the
16 counties about things to be aware of, things to plan for,
17 things like that.

18 THE COURT: Okay.

19 BY MS. KAISER:

20 **Q.** Do you have any recollection of when you began training
21 the counties -- all 159 counties on the new equipment?

22 **A.** I don't specifically recall when that happened. And
23 again, that was -- that training would have been handled by
24 Michael Barnes' team.

25 **Q.** The first election, what was the first election that the

1 BMDs were used in statewide?

2 **A.** It was -- those were the municipal elections that I
3 mentioned in the fall of 2019, and there were, I think, six
4 counties involved.

5 **Q.** How about a statewide election?

6 **A.** That -- I believe that was -- would have been the
7 presidential preference primary that was moved twice and ended
8 up occurring in June of 2020, I believe.

9 **Q.** It was originally scheduled to take place earlier than
10 that; isn't that right?

11 **A.** I think in March of 2020 was the original plan.

12 **Q.** So -- and how many BMDs, ultimately, were distributed to
13 the 159 counties in Georgia?

14 **A.** I don't know. I know it was a large number, but I
15 couldn't tell you the number.

16 **Q.** Does roughly 30,000 sound approximately right?

17 **A.** It is probably in the ballpark. Again, Gabe Sterling kept
18 track of all of that. I know that we got -- we got as many out
19 as we could. And as I recall, no county was short any. I
20 think every county basically was satisfied that they could work
21 with the number that they had.

22 **Q.** And in addition to the BMDs, there were other -- there was
23 other equipment that had to go along with the BMDs like
24 printers and scanners.

25 Do you agree?

1 **A.** That's correct.

2 **Q.** So, you know, in roughly three or four months, the State
3 was able to roll out brand-new equipment to all 159 counties in
4 Georgia; is that right?

5 **A.** Well, I don't -- which three or four months are you
6 talking about?

7 **Q.** I'm talking about late fall and early spring of 20 -- late
8 fall 2019.

9 **A.** I think -- I think around -- that time frame, it started.

10 Now, keep in mind that all had to come -- it had to get
11 into the State. It had to be acceptance tested. It had to be
12 shipped. But it was -- it was a big effort to get all of that
13 stuff out.

14 And I think it was around -- I think it was around
15 Valentine's Day, so mid February that we had the vast majority
16 of it distributed. I'm sure there were probably some pieces
17 that came in that were supplemented, but I believe that was the
18 goal was sometime around mid February to get the vast majority
19 of it in the counties.

20 **Q.** And in that same time period, late 2019 through roughly
21 February or early March 2020, the State worked with the
22 counties to train election workers on all of this new
23 equipment; correct?

24 **A.** Well, just to clarify, the State -- we provided the
25 information to the counties. The counties trained the poll

1 workers. We didn't train the election workers, but we
2 certainly made sure that they had manuals and procedures and
3 things like that so that the counties could train the election
4 officials.

5 **Q.** Thank you for the clarification.

6 And before the presidential primary selection in 2020,
7 Georgia voters also had to learn how to use this brand-new
8 system; correct?

9 **A.** That's correct.

10 **Q.** One of the issues raised about the BMD system during the
11 selection process was that it was a little bulky; is that
12 right?

13 **A.** It was. It was certainly bulkier than the DRE system.

14 **Q.** And that is because it has multiple components, pieces of
15 equipment; is that right?

16 **A.** Yeah. The footprint was larger, but yeah, you had
17 multiple pieces of equipment that you didn't have with the
18 DREs.

19 **Q.** Plus all the peripheral wires and boxes and everything
20 that you needed to get that all set up in the polling places?

21 **A.** That's correct.

22 **Q.** With all of those different pieces of equipment, is it
23 fair to say that the BMD equipment didn't always work properly?

24 **A.** I don't -- I don't think I would agree with that,
25 necessarily. There were -- there were more opportunities for

1 people to maybe make mistakes setting it up.

2 I don't know that the equipment didn't work properly. I
3 think there was certainly a learning curve from the counties'
4 side in terms of getting it set up, but I don't -- I don't
5 recall many, if any, cases of people saying that it didn't
6 work.

7 There may have been some, but certainly, that wasn't a big
8 issue that the machines weren't working properly.

9 **Q.** We'll take a look at some documents on that.

10 The elections division has investigatory authority for any
11 issues with the voting equipment; is that right?

12 **A.** Not the -- the investigations division is a separate
13 division of the Secretary of State's office. They conduct the
14 investigations.

15 **Q.** But part of your responsibilities as elections director
16 was to receive complaints about any issues with the
17 equipment -- with the election equipment; right?

18 **A.** To receive some complaints. A lot of complaints went
19 directly to investigations. But if something came to me that
20 needed to be investigated, I would forward it to
21 investigations.

22 **Q.** Okay. And if a complaint raised a security concern about
23 voting equipment, you would refer that to the investigations
24 division; right?

25 **A.** Almost certainly, and possibly to other -- other people or

1 other interests if it was something that I thought was
2 appropriate.

3 **Q.** Frances Watson was the chief of The investigations
4 Division for most of your tenure; is that right?

5 **A.** Certainly the last -- the second half of my tenure was
6 elections director. Russell Lewis was chief investigator when
7 I began, and somewhere about halfway, I think, Frances became
8 chief investigator.

9 **Q.** Since the implementation of the BMD voting system, was
10 Ms. Watson in that position?

11 **A.** I believe so.

12 **Q.** When an investigation was done, typically, there was a
13 report or an investigation file opened; is that right?

14 **A.** Yes.

15 **Q.** And unless a complaint was determined to be bogus or a
16 false report, you would expect the investigations division to
17 create a written report regarding its investigation; is that
18 right?

19 **A.** Yes. If they opened -- if they opened a case. Again, a
20 lot of times, investigative issues might come up and it may be
21 something that a phone call could resolve. In that case, they
22 may not open an investigation. That was the discretion of the
23 chief investigator, so -- but if it was -- if they looked into
24 the matter and found some substance there, then my
25 understanding is they would open an investigation, complete a

1 report, and present it to the State Election Board.

2 **Q.** And in the ordinary course, those investigation files are
3 kept for either five or seven years.

4 Is that your recollection?

5 **A.** I think that is right.

6 **Q.** Mr. Harvey, you were aware that there is an emergency
7 backup plan in case the BMDs at a polling place are not
8 working; is that right?

9 **A.** That's correct.

10 **Q.** And the plan provides that if BMDs are not working, voters
11 switch to hand-marked paper ballots; right?

12 **A.** Correct.

13 **Q.** And so the poll workers are trained on how to conduct an
14 election on hand-marked paper ballots; correct?

15 **A.** They should be, yes.

16 MR. TYSON: I'm sorry. Objection, Your Honor. I
17 think Mr. Harvey just testified that poll workers are not
18 trained by the Secretary's office, they are trained by the
19 counties.

20 BY MS. KAISER:

21 **Q.** Mr. Harvey, in your role as elections director, is it your
22 knowledge that poll workers were trained on how to conduct an
23 election on hand-marked paper ballots?

24 **A.** It is my understanding that they certainly should have
25 been. Now, whether an individual county did it well or poorly,

1 I wouldn't necessarily know.

2 But yes, my -- as election director, I would have expected
3 every county to train their poll workers to deal with an
4 emergency situation that required paper ballots.

5 **Q.** Mr. Harvey, if you could turn to Tab 4 in the binder in
6 front of you. I'll give you a moment to review that.

7 **A.** (The witness complies.)

8 Okay.

9 **Q.** Do you recognize this document?

10 **A.** I recognize the emails, and -- I recognize it as an email.

11 **Q.** And the top email in the chain is one from you to Scott
12 Tucker, Tom Feehan, and Gabriel Sterling dated June 9, 2020;
13 correct?

14 **A.** Yes.

15 THE COURT: What is the exhibit number again?

16 MS. KAISER: I'm sorry, Your Honor. It is 392.

17 BY MS. KAISER:

18 **Q.** Did you send this in the ordinary course of your work as
19 the elections director, Mr. Harvey?

20 **A.** I believe I did.

21 MS. KAISER: Your Honor, we move to admit Plaintiffs'
22 Exhibit 392.

23 MR. TYSON: Just a moment, Your Honor.

24 Your Honor, we object to -- just verifying --

25 Your Honor, we would note the exhibit hasn't been

1 admitted yet, and it is already on the screen. I'm trying to
2 locate our objection in our pretrial order, but we would object
3 to statements that were not from Mr. Harvey or from Secretary
4 of State staff as hearsay.

5 MS. KAISER: Your Honor, we're seeking to admit just
6 to show the effect on the listener.

7 THE COURT: I'm sorry. I --

8 MS. KAISER: I apologize.

9 Sure. Your Honor, we're offering this to show the
10 effect on the listener to show the Secretary of State's
11 knowledge of the complaint in this document.

12 THE COURT: Okay. I don't know what the document is,
13 so now I'm really -- I only saw one page of it. I don't know
14 whether there is another.

15 MS. KAISER: I apologize, Your Honor. It is Tab 4 in
16 Your Honor's binder.

17 THE COURT: Right.

18 MS. KAISER: And it is Exhibit 392.

19 THE COURT: I'm looking at it now.

20 **(There was a brief pause in the proceedings.)**

21 THE COURT: And you're offering it to show the impact
22 on the -- on who?

23 MS. KAISER: On Mr. Harvey as the elections director
24 of the Secretary of State.

25 THE COURT: It is accepted for that purpose.

1 MS. KAISER: Thank you, Your Honor.

2 THE COURT: Are you going to ask a question about it?

3 MS. KAISER: Yes, Your Honor.

4 BY MS. KAISER:

5 Q. Mr. Harvey, if you look at the first email at the
6 bottom --

7 THE COURT: I've admitted it for that purpose solely
8 at this juncture.

9 THE WITNESS: Which email, ma'am?

10 BY MS. KAISER:

11 Q. The email at the bottom of the second page from -- it is
12 from management escalation issues.

13 A. Yes, ma'am.

14 Q. And it reports that at this voting precinct in Cobb
15 County -- do you see that at the bottom?

16 A. I do.

17 Q. That they were not allowing anyone to vote because the
18 machines were down.

19 Do you see that?

20 MR. TYSON: And, Your Honor, I'll object. I think
21 we're getting into the truth of what this is here, what is
22 being asked in this email.

23 THE COURT: I don't know until she finishes her
24 question. Thank you.

25 MR. TYSON: I'm sorry. I thought the question was

1 complete.

2 THE COURT: No I don't think it is.

3 MS. KAISER: I just wanted to make sure you're with
4 me, Mr. Harvey.

5 THE COURT: Have you read it?

6 THE WITNESS: Yes, ma'am, I have read it.

7 THE COURT: Go ahead. You can ask your question.

8 BY MS. KAISER:

9 Q. And this is a complaint that got forwarded on to you; is
10 that right?

11 A. That's correct.

12 Q. And you forwarded this to Scott Tucker and Tom Feehan.
13 Who are those individuals?

14 A. Scott Tucker and Tom Feehan were the, I guess, account
15 managers. I'm not sure. They probably had a different title,
16 but they were the main Dominion representatives for the
17 Secretary of State's office. They were the ones that we would
18 bring issues to, so I was letting them know about this issue.

19 Q. And this issue being that your understanding was that this
20 precinct had shifted to paper ballots because of problems with
21 the BMDs; is that right?

22 MR. TYSON: And I'll object, Your Honor. That is
23 asking for the truth of what is being asserted in the email.

24 MS. KAISER: I asked for his understanding.

25 THE COURT: I'm sorry?

1 MS. KAISER: I asked for his understanding, Your
2 Honor.

3 THE COURT: All right. I'll let you proceed.

4 MS. KAISER: Thank you.

5 BY MS. KAISER:

6 Q. Mr. Harvey, is it -- excuse me. Was it your
7 understanding -- let me start that over.

8 You forwarded this on to Scott Tucker and Tom Feehan at
9 Dominion. You forwarded this complaint.

10 Your understanding of the complaint was that the BMD
11 machines at this polling precinct were not working; is that
12 right?

13 A. Yes, ma'am.

14 Q. And that the polling precinct had shifted to paper
15 ballots; is that correct?

16 A. Yeah. That is what I would have gotten from the email.

17 Q. Is it fair to say, Mr. Harvey, that the poll workers
18 handling the paper ballots at this polling precinct should have
19 been sufficiently trained to use paper ballots?

20 MR. TYSON: I'll object, Your Honor. Again, training
21 doesn't happen from the Secretary's office. It happens from
22 counties.

23 THE COURT: I don't know that to be true one way or
24 the other.

25 You can ask him to lay a foundation.

1 BY MS. KAISER:

2 Q. Mr. Harvey, you testified that your understanding as the
3 elections director is that poll workers should be sufficiently
4 trained to conduct elections on hand-marked paper ballots; is
5 that right?

6 A. I did.

7 Q. And so in this instance, is it fair to say that you would
8 expect the poll workers that were handling this election on
9 paper ballots should have been sufficiently trained to do so?

10 A. I certainly would have hoped so and would have expected
11 that to be the case.

12 Q. Thank you.

13 Mr. Harvey, if you could turn to Tab 5 in your binder.
14 This is Plaintiffs' Exhibit 72.

15 A. Okay.

16 Q. Do you recognize this document, sir?

17 A. I do.

18 Q. This top email in this chain is an email from you to Erica
19 Hamilton copying Frances Watson, Scott Tucker, and Tom Feehan,
20 and it is dated June 9, 2020.

21 Do you see that?

22 A. I do.

23 Q. Did you send this in the course of your work as the
24 elections director of the Secretary of State?

25 A. I believe I did.

1 MS. KAISER: Your Honor, we would move to admit
2 Plaintiffs' Exhibit 72.

3 MR. TYSON: And, Your Honor, we would object. We
4 have multiple levels of hearsay here. We have a caller --
5 report of a caller to somebody to Mr. Harvey. We also had an
6 issue of relevance with this machine -- with this as far as the
7 relevance to the constitutional burden on the plaintiffs here,
8 and we object on that basis.

9 MS. KAISER: Your Honor, similar to the last exhibit,
10 we are seeking to admit this to show the effect on the
11 listener, and --

12 THE COURT: The listener being Mr. Harvey?

13 MS. KAISER: Mr. Harvey.

14 THE COURT: For that purpose, you can have it
15 admitted for that limited purpose.

16 MS. KAISER: Thank you.

17 BY MS. KAISER:

18 Q. Mr. Harvey, the bottom email in this chain reports that a
19 caller had stated that she had been at a polling location and
20 not -- she states, not one of the machines is working, and they
21 do not have any paper ballots.

22 When you received this complaint, was it your
23 understanding that at this polling precinct in DeKalb County,
24 there was an -- BMDs were not working and they did not have any
25 paper ballots?

1 **A.** That is what I would have gotten from the email. I would
2 also say just as a -- my experience is also that when -- a lot
3 of times when voters would call in with complaints, they
4 wouldn't often understand. They would say things like, the
5 machines aren't working.

6 And they may be talking about any number of different
7 components. But just reading it as it is, that would be my
8 understanding.

9 **Q.** And you forwarded this concern to Erica Hamilton; is that
10 right?

11 **A.** I did.

12 **Q.** Who is Ms. Hamilton?

13 **A.** At the time, she was the director of elections for DeKalb
14 County.

15 **Q.** And you wrote, needs addressing.

16 Do you see that?

17 **A.** I do.

18 **Q.** This needed addressing because the polling place should
19 have had backup paper ballots; is that right?

20 MR. TYSON: Objection, Your Honor. That is assuming
21 that the polling places did, in fact, lack paper ballots.
22 Mr. Harvey has just testified that his experience was that was
23 not always the case in a voter complaint.

24 THE COURT: Well, he can answer as he sees fit. It
25 is not going to make a difference of any magnitude.

1 Go ahead and ask the question again.

2 BY MS. KAISER:

3 **Q.** Mr. Harvey, I asked whether you wrote, needs addressing,
4 because the polling place should have had paper -- backup paper
5 ballots.

6 **A.** Well, needs addressing would have been to the entire
7 situation. Obviously, there was -- there was something that
8 was perceived to be wrong. Whether she was the caller or the
9 voter was accurate, if her perception was that something is
10 wrong, then it needed to be addressing -- it needed addressing,
11 whatever the issue was. And Ms. Hamilton certainly would have
12 been in a better position to know what if -- what the issue was
13 if there was an issue.

14 **Q.** But if there was an issue with the BMDs at the polling
15 place, there should have been paper backup ballots available
16 for the voters; is that right?

17 **A.** There should have been. I don't know that there weren't,
18 but there -- that would certainly be the procedure.

19 **Q.** Would you turn to Tab 8 in your binder, please,
20 Mr. Harvey. It is Plaintiffs' Exhibit 274.

21 **A.** Okay. I've read it.

22 **Q.** Do you recognize this document, sir?

23 **A.** I recognize it as a series of emails among me and other
24 people.

25 **Q.** The top email is from Gabriel Sterling to you with the

1 subject Fulton County Express Polls. It is dated September 17,
2 2019.

3 Do you see that?

4 **A.** I do.

5 **Q.** And right below that is an email that you sent on the same
6 date, September 17, 2019.

7 Do you see that?

8 **A.** Are you -- yeah. Are you talking after the --

9 **Q.** The second email --

10 **A.** -- the straight line?

11 Yes, ma'am, I see that.

12 **Q.** Thank you.

13 **A.** At 9:10, is that the one you are referring to?

14 **Q.** 9:34 A.M.

15 **A.** Okay. I got you.

16 **Q.** That is something that -- an email that you sent; correct?

17 **A.** Yes, ma'am.

18 **Q.** And this is something that you sent in the ordinary course
19 of your work as the elections director of the Secretary of
20 State's office?

21 **A.** Yes.

22 MS. KAISER: Your Honor, we move to admit Plaintiffs'
23 Exhibit 274.

24 MR. TYSON: And, Your Honor, we would just object on
25 the basis of relevance. This relates to check-in units, not

1 DREs or BMDs from 2019 that are not used anymore.

2 MS. KAISER: Your Honor, we believe this document is
3 relevant to showing the State's ability to ensure the physical
4 security of voting equipment.

5 THE COURT: Well, is it part of a larger group of
6 documents relating to that same capacity regardless of the
7 machines, or is it a standalone?

8 MS. KAISER: I think, Your Honor, we do have other
9 documents that go to the same issue.

10 THE COURT: Well, I'll consider -- I'll put this on
11 hold then because, I mean, it is sort of -- if it is just by
12 itself, it doesn't really show anything, but it doesn't matter
13 what equipment is, I recognize, because it is the same issue
14 again and again, but it would be nice to see what it is
15 actually connected to in terms of the current machines.

16 MS. KAISER: Understood. Understood, Your Honor.

17 We do believe that the facts discussed in this
18 document are particularly concerning.

19 MR. TYSON: Your Honor, if I could also just
20 supplement based on what Ms. Kaiser said. Further, the
21 indications are counties are having to safeguard this equipment
22 in this case. I think the statement was --

23 THE COURT: Now, you're speaking too fast.

24 MR. TYSON: I'm sorry.

25 THE COURT: You've been hanging out with a fast

1 group.

2 MR. TYSON: Hanging out with Mr. Bedard too long.

3 Ms. Kaiser referenced the State safeguarding
4 different components. And just wanted to reference this is a
5 county safeguarding components. That's an additional part of
6 our relevance objection.

7 MS. KAISER: Your Honor, we believe that the State's
8 handling of incidents like this are relevant to --

9 THE COURT: Well, you can get back to it once I have
10 other current information. I just sort of -- it is 2019. It
11 is -- I understand the potential relevance, but not standing
12 alone, so it would probably be easier for me to see it not as
13 the introductory document. Let me see how it relates to the
14 other ones.

15 MS. KAISER: Understood, Your Honor. I'll move on.

16 BY MS. KAISER:

17 **Q.** Mr. Harvey, you are aware of a situation where election
18 workers, while they were transmitting ballots coming out of the
19 BMD system, stopped at one of the election workers' homes.

20 Do you recall this?

21 **A.** I believe I have some recollection. I don't remember
22 where that happened. I believe that was an allegation that was
23 made.

24 THE COURT: Just one second. Are there two
25 individuals -- one of them is the security person.

1 Is there somebody who is a witness who is --

2 **(There was a brief pause in the proceedings.)**

3 THE COURT: I'm sorry. Ask the question again. I
4 got distracted.

5 MS. KAISER: Your Honor, I asked Mr. Harvey if he was
6 aware of a situation where in which election workers, while
7 they were transmitting ballots coming out of the BMD system,
8 stopped at one of the election workers' homes for a period of
9 time.

10 THE WITNESS: I believe I remember something about
11 that.

12 BY MS. KAISER:

13 Q. One of them took a shower while ballots sat in their cars
14 in the driveway.

15 Do you recall that?

16 A. I believe I do.

17 Q. And you were not aware of any efforts taken to confirm
18 that that incident didn't affect the tabulation of ballots in
19 that county; is that correct?

20 A. Can you ask that again?

21 Q. You were not aware of any efforts taken to confirm that
22 that incident did not affect the tabulation of ballots in that
23 county; correct?

24 A. I don't think I know what the end result of that was.

25 Q. If you would turn to Tab 9 in your binder, please.

1 THE COURT: What was -- was that in a tab, or you
2 just raised that?

3 MS. KAISER: My series of questions I had not -- I
4 was not referencing a document yet, Your Honor.

5 THE COURT: That's fine.

6 MS. KAISER: I now have asked the witness to look at
7 Tab 9, which is Plaintiffs' Exhibit 30.

8 THE WITNESS: Okay. I've read the document.

9 BY MS. KAISER:

10 Q. Do you recognize this document?

11 A. I do.

12 Q. The bottom email in this chain that starts at the bottom
13 of the second page, this was forwarded to you from Frances
14 Watson on November 12th, 2020.

15 Do you recall that?

16 A. I see it on here. I don't independently recall it, but I
17 see it on the document.

18 Q. Did you receive this email in the ordinary course of your
19 work, sir?

20 A. Yes, ma'am.

21 MS. KAISER: Your Honor, we move to admit Plaintiffs'
22 Exhibit 30.

23 MR. TYSON: And, Your Honor, we would just make a
24 relevance objection in terms of this is a county function being
25 carried out by county officials.

1 Hearsay objection because it is hearsay.
2 Mr. Hunckler is not here regarding his complaint and his
3 allegations, so we don't believe it is relevant, and we believe
4 it is a hearsay statement.

5 MS. KAISER: Your Honor, we would submit to admit
6 this document for the effect on Mr. Harvey as the listener.

7 THE COURT: Okay. For that limited purpose, I do
8 note that they are obviously records kept in the regular course
9 of the business of the State defendants as well, but you are
10 going to have to do some bridging here to get where you want
11 because I don't know what the effect is on him still and what
12 you are -- I mean, I have the notion of what you are getting
13 at.

14 But go ahead. You'll have to be able to connect all
15 of this up.

16 MS. KAISER: Understood, Your Honor.

17 THE COURT: And if you don't, then it is not going to
18 be relevant.

19 MS. KAISER: Understood. Thank you, Your Honor.

20 BY MS. KAISER:

21 Q. Mr. Harvey, when you received this email from Ms. Watson,
22 you understood that there was an incident in which election
23 workers who were transporting ballots that came out of the BMD
24 system stopped at their home for a period of time and left the
25 ballots in their car; is that correct?

1 **A.** That is what was in the email, yes, ma'am.

2 **Q.** And at the email on the bottom of the first page, this
3 email from you to Blake Evans sent at 10:17 A.M.

4 Do you see that?

5 **A.** Yes.

6 **Q.** Can we get Jason to make sure the ballots were accounted
7 for?

8 **A.** I see that, yes.

9 **Q.** You were concerned about this incident, were you not?

10 **A.** Yes.

11 **Q.** Because this is not something that election workers should
12 be doing; is that right?

13 **A.** Yes.

14 **Q.** But you were not aware of any efforts taken to confirm
15 that this incident did not affect the tabulation of ballots in
16 this county; is that correct?

17 MR. TYSON: Your Honor, I'll just object again. I
18 think we're getting into it assumes that that incident is true
19 to ask the question of what Mr. Harvey has done in response to
20 it.

21 THE COURT: Well, you can elicit something to see
22 whether he thinks it was true as well if you want.

23 BY MS. KAISER:

24 **Q.** Mr. Harvey, did you assume that this report was true?

25 **A.** It certainly had the ring of truth to it. Yeah, I would

1 take a report like this at face value to certainly follow up
2 on.

3 **Q.** But you were not aware of any efforts taken to confirm
4 that this incident did not affect the tabulation of ballots in
5 this county; is that correct?

6 **A.** Any efforts that I took or anyone else took? Are you
7 asking any efforts that I took?

8 **Q.** I'm asking both.

9 Are you aware of any efforts that anyone took?

10 **A.** Well, Blake Evans was the deputy director of Fulton
11 County, so I was making him aware of it so that he could follow
12 up, and also the fact that Frances Watson was on the original
13 and then I copied her on my response to Blake, believed that
14 she would have opened an investigation on that conduct too.

15 **Q.** Did you follow up to determine --

16 THE COURT: But Blake was with the Secretary of
17 State's office --

18 THE WITNESS: No, ma'am. At that time, he was with
19 Fulton County.

20 THE COURT: Because it just says here, SOS Georgia
21 gov in the -- to Evans, comma, Blake. We're talking about the
22 same thing.

23 THE WITNESS: Well, this is in 2020. I apologize. I
24 thought this was a previous election. I take that back.

25 So me letting Blake know would be asking Blake to

1 follow up with Fulton County and then Frances Watson to conduct
2 an appropriate investigation.

3 THE COURT: Frances Watson was with the State; right?

4 THE WITNESS: Yes, ma'am. She was the chief
5 investigator for the Secretary of State.

6 BY MS. KAISER:

7 Q. But you are not aware of whether Ms. Watson did undertake
8 an investigation into this incident, are you?

9 A. As I sit here now, I don't recall.

10 Q. Turn to Tab 10, please, Mr. Harvey, Plaintiffs'
11 Exhibit 100.

12 A. Okay.

13 Q. Do you recognize this document, sir?

14 A. I do.

15 Q. The bottom email in this -- on this page is an email from
16 Frances Watson to you and others in the Secretary of State's
17 office; is that right?

18 A. That's correct.

19 Q. It was sent to you in the ordinary course of your work?

20 A. Yes, ma'am.

21 MS. KAISER: Your Honor, we move to admit Plaintiffs'
22 Exhibit 100.

23 MR. TYSON: Your Honor, we would object. Well, first
24 of all, I just would note that there was first-line identifying
25 information.

1 THE COURT: You would object and you first of all
2 wanted --

3 MR. TYSON: I'm sorry. I would note there is
4 personal identification information of the complainant,
5 Ms. Jones, that is displayed there. But we would object based
6 on hearsay. Again, this is a report from Ms. Jones being
7 offered for the truth.

8 We would also object to relevance, Your Honor. You
9 discussed the issues on liability in your summary judgment
10 order that State defendants are responsible for selecting the
11 system and its overall management in mitigation, and we're
12 still talking about actions of counties, so we would again
13 object on relevance.

14 MS. KAISER: Your Honor, I believe this is a business
15 record and is not subject to the hearsay rule and that it is
16 relevant, again, to showing the State's management of the
17 election voting equipment.

18 THE COURT: Well, it is -- I mean, as I perceive it,
19 it is this: Ultimately, the State has oversight responsibility
20 for ensuring the integrity and safety of the system.
21 Obviously, some of this that we have seen so far are misdeeds
22 on the part of either third parties or county staff or
23 combination of that.

24 But it still remains the responsibility of the State,
25 and that is why people are writing Mr. Harvey about it, to see

1 whether he will investigate because there's -- or whether to
2 take some type of action on this part because of the ultimate
3 oversight and responsibility of the State to not wash its hands
4 of -- in the case of mishandling of ballots or ballot machines.

5 And Mr. Harvey certainly seems to think that
6 Ms. Watson is investigating. When I look at Exhibit 100, it
7 says, I assume you're investigating it brings --

8 And Ms. Watson also writes to Ryan Germany, who is, I
9 think at that point, general counsel, Evans Blake -- Blake
10 Evans who we have already talked about and Mr. Harvey about
11 this.

12 So I think that it is sort of like there are multiple
13 levels of involvement, and some of it -- and ultimately, it is
14 the State's responsibility to take it, review this, and take
15 whatever corrective measures. It doesn't mean that they are
16 the ones who have to implement all of them. The county has to
17 implement them.

18 But for that reason, you know, I continue to think
19 they are relevant. Whether you are going to hook this up to
20 actually be a pattern rather than a little bit of this and
21 little bit of that and people screwing up is a whole other
22 matter. I mean, there are a lot of counties, a lot of people.

23 So, I mean, I'm letting you make a record, but I
24 can't tell you that I can see, you know, the gross pattern at
25 this point.

1 But I can see that I need a restroom break, so I'm
2 going to stop here for five minutes because we're going to go
3 as long as we need to on this witness. All right?

4 So anyone else who is in the same position may take
5 a -- go to the restroom and come back.

6 COURTROOM SECURITY OFFICER: All rise.

7 **(A brief break was taken at 4:29 PM.)**

8 THE COURT: So just to repeat, I'm letting in 100 for
9 a limited purpose as I have articulated and limited purpose
10 relates to the impact on Mr. Harvey and how that might -- and I
11 understand that down the line, this may or may not be actually
12 hooked up properly to show whether the State has assumed --
13 properly assumed responsibility for the security of the data
14 systems that are supposed to be protected. But we'll see
15 whether they -- I don't have any idea whether they are going to
16 hook it up properly or not, or sufficiently, but I'll let it in
17 for that purpose for now.

18 MR. TYSON: Thank you, Your Honor.

19 THE COURT: So if we have more like this, if you want
20 a standing objection, you can, so that just simply we're not
21 doing it each time.

22 MR. TYSON: I think that would be good, Your Honor,
23 especially for the complaints because I think part of the
24 problem is at some point it does --

25 THE COURT: I'm sorry. I proceeded without --

1 without you here. That was unfair. I just thought you were in
2 here.

3 MS. KAISER: Apologies, Your Honor.

4 THE COURT: Maybe you could just read what I said so
5 that counsel can know, Ms. Kaiser. I can do it.

6 Sorry. It's just my ruling.

7 **(The record was read back by the court**
8 **reporter.)**

9 MR. TYSON: Your Honor, just to finish that point, I
10 think a standing objection for the complaints, which I believe
11 on looking at the tabs will be Exhibit 102, 261, and 256, and
12 part of our concern, again, on the relevance and the hearsay
13 point is that if these are only coming in for the effect on
14 Mr. Harvey, at some point it is cumulative unless they are
15 actually true, which, again, is kind of the hearsay problem
16 here.

17 So we would request a standing objection on the
18 relevance point and on the hearsay issues related to complaints
19 received by the Secretary's office during Mr. Harvey's
20 testimony.

21 THE COURT: Okay. So are we -- we just talked about
22 Plaintiffs' proffered Exhibit 100. And that was at Temple
23 Emanu-El Spalding Drive, which is a location.

24 Is there something you want to -- I mean, I have it
25 in front of me.

1 MS. KAISER: Yes, Your Honor, I have a couple --

2 THE COURT: Is it about this from him --

3 MS. KAISER: I do have a couple of questions about
4 this.

5 THE COURT: Go ahead. Sorry to have interrupted your
6 examination.

7 MS. KAISER: Not at all. Not at all.

8 BY MS. KAISER:

9 Q. Mr. Harvey, do you have Exhibit 100 in front of you?

10 A. Yes, ma'am, I do.

11 Q. Mr. Harvey, are you aware, was there a process in place
12 for counties to report issues -- you know, concerns about
13 election voting equipment on election day?

14 A. Normally, they would either call or email -- on an
15 election day, you said?

16 Q. Yes.

17 A. They could -- there wasn't one way because there were
18 multiple sources. Certainly, their designated liaison would be
19 a first point of contact. They could call me or email me
20 directly, Blake Evans, anyone in the Secretary of State's
21 office. We had a call center that was working that had numbers
22 that people could call. There were email complaints that could
23 be sent to the Secretary of State's office. So there were a
24 lot of ways to do that.

25 Generally speaking, the county director would contact me

1 if an issue bubbled up to them that was significant. Often if
2 it was a smaller issue, they may contact their county liaison
3 and try to get some type of reconciliation for whatever the
4 issue was. It really depended on the issue.

5 **Q.** But for -- you know, for an issue that was a certain
6 degree of seriousness, shall we say, the election workers were
7 supposed to report that problem; is that right?

8 MR. TYSON: I would just object to vague, Your Honor.
9 A certain degree of seriousness, I think if Ms. Kaiser could
10 explain what she means by that, we would be able to answer.

11 THE COURT: Why don't you attempt again to ask the
12 question.

13 BY MS. KAISER:

14 **Q.** Mr. Harvey, if there was a concern about improper
15 procedures being followed with respect to voting equipment, for
16 instance, that -- election workers should have reported that
17 problem; correct?

18 **A.** Normally, they would report it to their chain of command
19 in the county. They could certainly report it as, in this
20 case, directly to the Secretary of State's office. That
21 happened occasionally. It didn't happen a lot, but it wasn't
22 completely out of the ordinary for that to happen.

23 **Q.** And if the county workers got a report about something
24 like that, should they have reported that to the State?

25 **A.** So if an election worker in a county reported it to their

1 chain of command?

2 **Q.** Yes.

3 **A.** Again, it depends on the seriousness of the issue. There
4 were counties that would self-report problems that they were
5 aware of. There were other counties that would not. There was
6 not a -- there was not a mandate or a requirement that they do
7 that.

8 The general impression was that if a county director
9 became aware of a significant problem, they would generally
10 report it in order to, you know, show that they are taking
11 action and they are taking it seriously and they are mitigating
12 it as quickly as possible, rather than have it be reported, you
13 know, a week later and have them not having done anything about
14 it.

15 **Q.** You've referenced a chain of command several times,
16 Mr. Harvey.

17 Could you just walk me through what that chain of command
18 was, starting with the election worker.

19 **A.** Well, and again, this is all done at the county level, so
20 different counties would -- may organize it differently. But
21 the basic -- it is a pretty simple framework. You would have
22 the -- in most counties, you would have the county election
23 office and then you would have the individual polling places
24 with a poll manager. Every polling place had a poll manager.
25 You would usually have an assistant or two and then multiple

1 workers.

2 Large counties would sometimes have kind of a graduated
3 chain of communications. They would have a regional supervisor
4 to contact. But every county was done a little bit
5 differently.

6 So you would go from a poll worker. They would generally
7 report something to their manager, who would either report it
8 to a regional person, if there was one in that county -- that
9 would really only be in the very large counties. The poll
10 manager would generally report directly to the -- to the county
11 election director.

12 But again, that was all -- that wasn't something that was
13 imposed by the Secretary of State's office. That was an
14 organization that was done in each jurisdiction.

15 **Q.** And then there were instances in which that county --
16 county election manager reported issues up to the State; is
17 that right?

18 **A.** Yes, ma'am, that would happen.

19 **Q.** And if a county election manager reported an issue to you,
20 Mr. Harvey, did you take that seriously?

21 **A.** Yes.

22 MR. TYSON: Excuse me, Your Honor.

23 BY MS. KAISER:

24 **Q.** Would you assume it to be true?

25 MS. KAISER: I'm sorry.

1 MR. TYSON: I'm sorry. Objection. Calls for
2 speculation. I think that is a very general question. If
3 somebody reported something to him, did he take it seriously?

4 THE COURT: He answered.

5 BY MS. KAISER:

6 **Q.** Did you assume a report like that to be true?

7 **A.** If a county election director called me, I generally, yes,
8 would assume it was -- it was true to the best of their
9 knowledge and understanding.

10 Now, they were often dealing with information that they,
11 you know, were getting second or thirdhand from a poll worker
12 through a manager or something like that.

13 But I always took calls and emails from county -- county
14 election directors because we also had -- the Secretary of
15 State's office had investigators and monitors in the field that
16 may be able to go by and assist or begin an investigation or
17 figure out what was going on.

18 **Q.** And Frances Watson was one of those investigators; is that
19 right?

20 **A.** She was the chief investigator. So she would actually be
21 controlling the people that were out in the field on election
22 day or during elections, so I wouldn't do that.

23 **Q.** And the email at the bottom of Plaintiffs' Exhibit 100 is
24 from Frances Watson to you and others in the Secretary of
25 State's office; correct?

1 **A.** That's correct.

2 **Q.** If you got a report from Frances Watson regarding problems
3 with voting equipment, did you take -- assume that to be true
4 to the best of her knowledge?

5 **A.** Well, in this case, I got an email forwarded from Frances
6 Watson. So just the fact that Frances Watson was sending me
7 something didn't necessarily make me believe what was in it was
8 true. It, one, let me know that she was aware of the issue and
9 that she would follow up and determine what the proper course
10 would be.

11 One of the priorities on election day in the Secretary of
12 State's office was to get information spread out quickly so
13 that people were aware of potential problems, and that is why
14 she would copy the people that she copied on it, so that it
15 wouldn't have one point where it may get lost. Somebody may --
16 you know, I may skip over that email and nobody knows about it.

17 So I would -- I wouldn't necessarily believe that what was
18 in the allegation was true. I wouldn't -- I wouldn't give it
19 any more weight if it came from her, but I would know that she
20 was aware of it, and that if it was something we needed to talk
21 about, we would.

22 **Q.** And so Ms. Watson, in her role as chief investigator, was
23 forwarding you information -- this information to make you
24 aware of it; is that right? Of the information in Plaintiffs'
25 Exhibit 100?

1 **A.** That's correct.

2 MS. KAISER: Your Honor, we would move to admit
3 Plaintiffs' Exhibit 100 as a business record.

4 THE COURT: I thought you were admitting it --
5 seeking to admit it as -- for its impact on him.

6 MS. KAISER: Your Honor, I believe we have now laid
7 the foundation for admitting this as a business record, not
8 just for the limited purpose of the effect on the listener.

9 MR. TYSON: And, Your Honor, even if this has been
10 authenticated as a business record, I don't believe that cures
11 the hearsay issue in the report. The business record is not a
12 record of the Secretary. It is a record of what Ms. Jones said
13 to somebody, which is still hearsay within the business record.

14 THE COURT: Well, I'm going to admit it for purposes
15 of showing that this complaint was made. I don't know whether
16 it is true, as well as its impact on Mr. Harvey.

17 MS. KAISER: Thank you, Your Honor.

18 BY MS. KAISER:

19 **Q.** Mr. Harvey, you see in the email from Frances Watson a
20 description of an incident at a polling location in which an
21 election worker reported they opened large cabinets containing
22 the voting machines and discovered that most of the voting
23 machines' election database doors were wide open and not
24 secured with a zip tie with a serial number.

25 Do you see that?

1 **A.** I do.

2 **Q.** Document states further down, we did not follow the
3 protocol for opening the large cabinets and starting up the
4 machines.

5 Do you see that?

6 **A.** Yes, ma'am.

7 **Q.** You don't know whether any further analysis was done of
8 the machines in this county to determine whether they had been
9 compromised or were otherwise unreliable for an election; is
10 that correct?

11 **A.** That's correct.

12 **Q.** Thank you.

13 If you turn to Tab 11, Mr. Harvey.

14 THE COURT: Do you know whether anyone else did a
15 follow-up to determine whether the allegations were accurate
16 and also required some type of specific follow-up?

17 THE WITNESS: Your Honor, it is my understanding that
18 Frances Watson would have done an investigation, and they would
19 have presented the findings to the State Election Board. That
20 is why I responded, I assume you're investigating.

21 And she would -- this is the kind of thing that would
22 certainly prompt an investigation.

23 THE COURT: And then she would by -- she was
24 independent in presenting this sort of -- her resolution of
25 such a thing to the State board.

1 Is that what happened?

2 THE WITNESS: That's correct.

3 THE COURT: And it didn't require your involvement?

4 THE WITNESS: It did not require my involvement.

5 Now, sometimes when they would do investigations, they would
6 consult with me or people in the elections division to get
7 clarification if there was a question about a procedure or a
8 piece of equipment or something like that.

9 So that was not unusual that they would do that, but
10 it did not require my -- any involvement from me unless they
11 asked.

12 THE COURT: Did she ever communicate with you
13 regarding her findings later?

14 THE WITNESS: I was generally present at the State
15 Election Board meetings when they were presented.

16 Now, in this case, for cases that were done in late
17 2020, I don't believe many of these cases had been presented to
18 the State Election Board by the time I left in essentially May
19 of 2021.

20 But if in the course of an investigation something
21 were to come up that she thought I would need to know about,
22 she would generally let me know. We communicated pretty
23 regularly.

24 THE COURT: So is that typically -- was it because of
25 all of the commotion going on with the 2020 election that it

1 wouldn't have been presented to the board, or is it just simply
2 that was the normal time period? Six, seven, eight months?

3 THE WITNESS: It would -- given the number of
4 complaints and cases they opened up, especially after 2020, you
5 know, six months would be a very quick turnaround, frankly,
6 because the election board only meets about quarterly. So --

7 THE COURT: I see.

8 THE WITNESS: -- that is my best answer.

9 BY MS. KAISER:

10 Q. Mr. Harvey, could you please turn to Tab 11 in your
11 binder, Plaintiffs' Exhibit 102.

12 A. Yes, ma'am.

13 Can I review it?

14 Q. Yes. Of course.

15 A. Okay.

16 Q. Do you recognize this document, Mr. Harvey?

17 A. Yes, ma'am.

18 Q. The top email on this chain is one from you to Frances
19 Watson, and it is dated November 10, 2020.

20 Do you see that?

21 A. I do.

22 Q. Did you send this in the ordinary course of your work?

23 A. I believe I did.

24 MS. KAISER: Your Honor, we move to admit Plaintiffs'
25 Exhibit 102.

1 MR. TYSON: Your Honor, same objection in terms of
2 hearsay and relevance. This complaint appears to have been
3 originated on Twitter, and then there is some follow-up. But
4 same objections.

5 MS. KAISER: Your Honor, based on the same foundation
6 we have laid on the previous document, we believe this is a
7 business record. I'm happy to lay that foundation again.

8 MR. TYSON: And, Your Honor, just to be clear, I
9 mean, I believe this precedent is similar to like a police
10 report. A police report may be a business record of the police
11 department. That doesn't mean that everything contained in
12 that report is not hearsay. There may be reports from other
13 people, reports of witnesses.

14 THE COURT: They almost always are. And so you know
15 but this -- the point here, as much as anything else, is that
16 this complaint is brought to the attention of the Secretary of
17 State's office, and it deals with the security of the BMDs
18 because the seal had been broken.

19 And to the extent that an essential question in this
20 case relates to the security of the data system and whether --
21 whether it is properly secured and whether it -- entry into the
22 system is possible so that it affects or infects other parts of
23 the system, it seems to have some relevance, as does the one
24 where they break in -- the last break-in.

25 So, you know, they may not connect it all up. That

1 is all I can say. But I think they are -- you know, this is --
2 the whole security of the system is a part of their claim, so
3 I'm hesitant to say that they can't explore it.

4 And yes, it is just based on a complaint, but then --
5 and what is reported above -- I mean, I can't -- the Twitter is
6 one thing. That is obviously whatever it is. But then there
7 is follow-up above it that makes it clear from the email dated
8 November 10, 2020, at 11:18 that they had identified -- in
9 fact, the staff had identified that the security seals on the
10 BMDs had been broken, so it is not just a Twitter business.

11 And that is an email from somebody, Mr. or Ms. Hall
12 who works at the State office, so I think that that is
13 sufficiently reliable that I'm just going to allow it in as a
14 business record.

15 MS. KAISER: Thank you, Your Honor.

16 BY MS. KAISER:

17 **Q.** Mr. Harvey, if you look at the bottom email on the second
18 page from Frances Watson to Adrick Hall at 5:55 P.M.

19 Do you see that?

20 **A.** Yes, ma'am.

21 **Q.** At the bottom there, it says, location of violation:
22 Hartwell polling place at the library.

23 Do you see that?

24 **A.** I do.

25 **Q.** And the next line says, description of violation: Many

1 voting machines unlocked during the day; correct?

2 **A.** That's correct.

3 **Q.** Ms. Watson sent that information to Adrick Hall and asked
4 him to investigate this issue in Hartwell; is that right?

5 **A.** Yes.

6 **Q.** And in the next email up from Mr. Hall, he reports that he
7 went -- that he went to vote absentee in person and the
8 security seals on the BMDs were broken.

9 Do you see that?

10 **A.** I do.

11 **Q.** Ms. Watson forwarded this complaint to you; is that right?
12 This report?

13 **A.** Yes, ma'am.

14 **Q.** As the elections director, do you know if any
15 investigation was done -- you do not know whether any
16 investigation was done into this situation; correct?

17 **A.** As I sit here now, I don't -- I don't know. Then I
18 don't -- I just don't have any memory right now what this
19 resulted in.

20 **Q.** You're not aware of any investigation being done; correct?

21 **A.** I don't know whether it was or not. My -- my impression
22 of this is that this would have generated an investigation, but
23 I can't say that for certain, sitting here.

24 **Q.** Turn to Tab 16, please, Mr. Harvey. This is Plaintiffs'
25 Exhibit 253.

1 **A.** Okay.

2 **Q.** Do you recognize this document, Mr. Harvey?

3 **A.** I do.

4 **Q.** The email at the bottom of the page -- first page is an
5 email from you to Jordan Fuchs, Ryan Germany, and Merritt
6 Beaver dated February 25th, 2021.

7 Do you see that?

8 **A.** I do.

9 **Q.** Did you send this in the course of your work, sir?

10 **A.** I believe I did.

11 MS. KAISER: Plaintiffs would move to admit
12 Exhibit 253, Your Honor.

13 MR. TYSON: Your Honor, we would just object on the
14 basis of relevance. The document indicates that it is unknown
15 whether there is any connection specific to an election or
16 registration office, and so therefore we would submit this is
17 not relevant to the claims in this case regarding the State's
18 actions on burdening the right to vote, allegedly.

19 MS. KAISER: Your Honor, I intend to ask the witness
20 further questions about that portion of the document.

21 THE COURT: Why don't we wait and see what you do.

22 MS. KAISER: Okay.

23 BY MS. KAISER:

24 **Q.** Mr. Harvey, in February of 2021, the FBI informed you that
25 nine Georgia counties may have downloaded malware related to

1 the SolarWinds hack; is that right?

2 **A.** That's correct.

3 **Q.** You forwarded that information to Jordan Fuchs, Ryan
4 Germany, and Merritt Beaver; is that right?

5 **A.** Yes. I think Merritt was actually on the call with me
6 when we talked to the FBI, but he is included on the email.

7 **Q.** And you wrote, Unknown if there is any connection specific
8 to elections or registration offices.

9 Do you see that?

10 **A.** I do.

11 **Q.** You never saw a report indicating that this malware
12 incident did not affect the election system in Georgia, did
13 you?

14 **A.** I don't believe I ever saw any report from the FBI
15 regarding this. I don't -- it was a phone call. But again,
16 writing in the email and my recollection is that it was sort of
17 an out of an abundance of caution to check with the counties,
18 but I just don't remember whether or not I saw a report from
19 the FBI. My experience is that I don't see many reports from
20 the FBI.

21 THE COURT: Well, did you call each of the nine
22 counties?

23 THE WITNESS: I'm sorry, ma'am?

24 THE COURT: I'm sorry.

25 Did you call each of the nine counties as referenced?

1 THE WITNESS: We -- I know we made phone calls. You
2 see the email at the top. And this was -- you know, by that
3 day, I had spoken to directors in all but three of the
4 counties, and I believe I eventually spoke to all the counties
5 either that day or the next day.

6 MS. KAISER: May I ask one more question, Your Honor?

7 THE COURT: Yes.

8 BY MS. KAISER:

9 Q. Mr. Harvey, you're not aware of any affirmative
10 determination that the incident discussed in this document did
11 not affect the election system in Georgia; is that correct?

12 MR. TYSON: Your Honor, objection. I just think this
13 calls for hearsay again because it would be somebody else's
14 determination that is being asked about, whether Mr. Harvey is
15 aware of that.

16 MS. KAISER: Your Honor, the State's claim in this
17 case is that the voting system is safe and secure. We are
18 allowed to probe and refute that defense. What Mr. Harvey knew
19 as the elections director about a cybersecurity incident like
20 this we think is very relevant to that issue.

21 THE COURT: You can ask the question, and he may not
22 know the answer, but that is -- you can explore that to a
23 limited extent.

24 MS. KAISER: I would just repeat my last question.

25 THE COURT: All right. Repeat your last question.

1 BY MS. KAISER:

2 Q. Mr. Harvey, you are not aware of any affirmative
3 determination made that the malware incident described in this
4 document did not affect the election system in Georgia;
5 correct?

6 A. I'm not aware of any reports on the effect of this
7 possible event.

8 Q. As elections director, do you think it was important to
9 make a determination that this had no effect on the election
10 system?

11 A. Well, it would -- I would say it would be important if we
12 got information from the FBI. If we got some follow-up, or if
13 a county had reported back issues that they had found, that
14 would certainly be something that we would follow up and would
15 likely follow up with -- with Dominion and with Center for
16 Election Systems and with our network security people.

17 But as I recall -- and again, I don't have a real crisp
18 memory of everything that was said in the phone call with the
19 FBI. But just a concern in general about this cloud flare
20 thing going to these counties. If I had gotten an affirmative
21 answer one way or the other, that would have been better,
22 certainly, but I don't believe I ever got anything else.

23 MS. KAISER: Your Honor, we move to admit Plaintiffs'
24 Exhibit 253.

25 THE COURT: Well, it is admitted for the limited

1 purposes stated.

2 BY MS. KAISER:

3 **Q.** Mr. Harvey, if you could turn to Tab 12 please,
4 Plaintiffs' Exhibit 261.

5 **A.** Okay.

6 **Q.** Do you recognize this document, sir?

7 **A.** I do.

8 **Q.** The first email on this chain is from Angelos Keromytis at
9 Georgia Tech to you, Ms. Fuchs, Merritt Beaver, and Tori
10 Thompson at Secretary of State's office dated December 30,
11 2020.

12 Do you see that?

13 **A.** I do. I'm copied on it.

14 **Q.** And the subject line is election machine hack, in
15 parentheses, Fulton County supposedly, end parens.

16 Do you see that?

17 **A.** I do.

18 **Q.** Did you receive this in the course of your work, sir?

19 **A.** I believe I did.

20 **Q.** And this is an email regarding a successful hacking
21 attempt in Fulton County on the voting machines; correct?

22 **A.** I don't know that I would characterize it quite like that.

23 That is a hashtag that was in there, and then there is
24 discussion back and forth about -- from these people that know
25 much more about it than I do, speculating about some of the

1 stuff.

2 But that is the hashtag that is at the base of the email.

3 **Q.** And Mr. Keromytis at Georgia Tech was alerting the
4 Secretary of State's office to this potential hacking attempt
5 into the Fulton County voting machines; is that right?

6 **A.** He was certainly giving the information making us aware of
7 it.

8 **Q.** As the elections director, would it have been important
9 to --

10 THE COURT: Why don't we clarify who Mr. Keromytis
11 is? As I understand, he was -- at least was at that point
12 chair and professor of Georgia Tech dealing with cybersecurity.
13 I don't know what the official -- computer science.

14 Did you know him personally?

15 THE WITNESS: Are you asking me?

16 I met him, I believe, one time, and had a couple of
17 emails back and forth. I don't know what, if any, role he had
18 in our office. I think he was -- I believe Ms. Fuchs knew him
19 and she kind of set up the initial contact. I don't think he
20 had any official status with our office.

21 So like I said, I met with him one time, and I think
22 we had some emails back and forth, but I don't know that there
23 was much substantial that came of it.

24 BY MS. KAISER:

25 **Q.** Are you aware of his position at Georgia Tech?

1 **A.** I believe I was, that he was a computer science or
2 computer engineering professor at Georgia Tech.

3 **Q.** As the elections director, it would have been important to
4 you to know whether there had been any hack of election
5 equipment; is that right?

6 **A.** That would have been important to know, yes.

7 **Q.** But you didn't do any follow-up on this report from
8 Mr. Keromytis; is that right?

9 MR. TYSON: And, Your Honor, I'll just object. We're
10 deep into layers of hearsay here. Mr. Harvey is not even on
11 the top four emails, it looks like, of this document. And I
12 mean, there are plenty of people who said WiFi can hack into
13 voting equipment post 2020 election.

14 I just don't -- I think we're deep into hearsay and
15 don't see the relevance here on this point.

16 MS. KAISER: Your Honor, we proffer that this is not
17 just from any member of the public. It is from, as Your Honor
18 noted, a professor from Georgia Tech. Mr. Harvey was part of
19 this -- he was a recipient of the email and was on the email
20 chain for at least a portion of time. He has just testified,
21 Your Honor, that it would be important to him to know whether
22 there had been a hack.

23 THE COURT: Well, I'm just trying to follow the time
24 frame here.

25 So the earliest message is the one in which

1 Mr. Harvey is copied?

2 MS. KAISER: Yes, Your Honor. The earliest message
3 begins at the bottom of the second page. Mr. Harvey is not
4 just copied but a recipient on the "to" line. He continues --
5 then the email from Mr. Keromytis in the middle of the page,
6 December 30, 2020, at 4:40 P.M., he's copied on that as well.

7 MR. TYSON: And, Your Honor, to be clear for our
8 hearsay objection, this is an email from Mr. Keromytis, but it
9 is forwarding a Twitter post about a WiFi hacking, allegedly,
10 post November 2020 election.

11 So that is the hearsay concern, in addition to the
12 fact that Mr. Harvey never responds or is in this chain beyond
13 receiving the email.

14 MS. KAISER: Again, Your Honor, we believe that his
15 awareness of the situation and what he did in response to it is
16 very relevant given his position.

17 THE COURT: I understand your position. But the only
18 thing about it is that it may be a completely relevant document
19 if you're -- I don't know whether Mr. -- whether Ms. Fuchs,
20 Mr. Fuchs -- I can't remember now.

21 MS. KAISER: Ms.

22 THE COURT: Ms. Fuchs is going to be testifying here
23 or not. But I don't know that Mr. Harvey direct -- I mean, the
24 very fact -- was the person to deal with all of this. That is
25 why it might have been Merritt Beaver, Jordan Fuchs. I mean,

1 that is the question I have.

2 MS. KAISER: Ms. Fuchs is not on our witness list,
3 Your Honor.

4 THE COURT: Well, did you have any conversations with
5 anyone else in your management teams about this?

6 THE WITNESS: I don't remember. It is likely that I
7 would have spoken with Gabriel Sterling about it. His office
8 was on the same floor as mine, and we spoke a lot in person.

9 So the fact that I don't respond via email doesn't
10 mean I didn't do anything. I don't know that I did. I
11 probably -- my normal response to something like this would be
12 to talk with Gabriel or Merritt Beaver or somebody in IT to
13 figure out what, if anything, needs to be done.

14 But as was said earlier, we got a lot of information
15 sent to us from lots of different sources. And based on
16 Ms. Fuch's response, it appears that she was familiar with it.
17 I may have spoken to her about it. It would be more likely
18 that I would have spoken to Mr. Sterling, but I just don't
19 recall.

20 THE COURT: I think you're going to call
21 Mr. Sterling.

22 Is that --

23 MS. KAISER: Yes, Your Honor.

24 THE COURT: -- right? And I think it would be -- at
25 least I'm going to hold off on ruling on the admissibility of

1 261 under these circumstances and the nature of the information
2 and what was going to require follow-up beyond what he says he
3 thinks he did, which you now have a record, which is -- that is
4 admissible.

5 MS. KAISER: Thank you, Your Honor.

6 THE COURT: All right.

7 BY MS. KAISER:

8 Q. Mr. Harvey, if you would please turn to Tab 13. It is
9 Plaintiffs' Exhibit 256.

10 A. Okay.

11 Q. Do you recognize this document, Mr. Harvey?

12 A. I do.

13 Q. This is an email from Scott Tucker to you and others in
14 the Secretary of State's office dated October 19, 2020;
15 correct?

16 A. Correct.

17 Q. And I believe you testified earlier that Mr. Tucker is an
18 employee at Dominion Voting Systems; is that right?

19 A. That's correct.

20 Q. And is he somebody that you worked with closely with
21 respect to the election system in Georgia?

22 A. Pretty closely. I would communicate pretty regularly with
23 him.

24 Q. What was his role at Dominion?

25 A. He and Mr. Feehan were the -- again, the two primary

1 people. Mr. Feehan generally dealt more with the equipment
2 with Michael Barnes and the equipment coming in and going out
3 to the counties.

4 Mr. Tucker was basically a troubleshooter, our main point
5 of contact for Dominion if we had issues or things that needed
6 to be escalated to Dominion.

7 **Q.** This is an email that you received in the course of your
8 work as the elections director?

9 **A.** Yes, ma'am.

10 MS. KAISER: Your Honor, we move to admit Plaintiffs'
11 Exhibit 256.

12 MR. TYSON: Your Honor, same objection for hearsay.
13 This is an email from Dominion. There is -- Mr. Harvey
14 received it. There is no indication that it is from the
15 Secretary's office. It is being offered for the truth of what
16 it asserts. The plaintiffs could call someone from Dominion,
17 but fought very hard not to have someone from Dominion talk at
18 this trial.

19 So we would object on hearsay, relevance, and again,
20 just same objections we posed previously on those.

21 MS. KAISER: Your Honor, the State's position has
22 been that -- in this case has been that Dominion is their
23 agent, so we submit that this is the statement of a party
24 opponent.

25 MR. TYSON: Your Honor, I believe -- I have to look

1 back at the contract. I believe Dominion was an independent
2 contractor, even if they were working with us on the deployment
3 of the system. I don't have that handy.

4 Yes. In the contract, there is a statement that all
5 contractor and contractor personnel are independent contractors
6 and not deemed an employee of the State.

7 We don't believe that that would be enough to get us
8 to agency in this situation or at least as an admission from
9 Dominion through the Secretary's office.

10 MS. KAISER: Your Honor, we don't believe that the
11 structure of the contract has anything to do with the legal
12 principle of agency for the purpose of this document.

13 THE COURT: Well, I don't really necessarily
14 understand what is going on with the document in the first
15 place.

16 So the PW had a PW.

17 What is the PW? Remind me.

18 MS. KAISER: Your Honor, that was a question I was
19 going to ask Mr. Harvey.

20 THE COURT: All right. Well, go ahead and ask him.
21 We'll deal with this once I get clear what this is dealing
22 with.

23 BY MS. KAISER:

24 Q. Mr. Harvey, in the last bullet point of this document, you
25 see Cherokee had a PW use a tech card.

1 Do you see that?

2 **A.** I do.

3 **Q.** PW refers to poll worker; is that right?

4 **A.** That is certainly my understanding.

5 **Q.** Right. And so this is a report from Dominion to Secretary
6 of State's office. Cherokee refers to Cherokee County.

7 Is that your understanding?

8 **A.** Yes, ma'am.

9 **Q.** About a poll worker in Cherokee County using a tech card
10 to remove the election in the Google text speech from a
11 machine.

12 And the machine is a BMD; correct?

13 **MR. TYSON:** Your Honor, again, we're asking for what
14 Mr. Tucker meant in these emails, and I don't think Mr. Harvey
15 can testify to that.

16 **THE COURT:** Well, I think he can testify of having
17 read it, and he probably -- he talked to Mr. Sterling on a
18 regular basis and some of these other people, so I mean,
19 whatever he knows, he can share with us. It may not be much.

20 What do you remember about this, if anything?

21 **THE WITNESS:** About this specific incident? I know
22 that we got these emails during advance voting to update issues
23 that may have come up. This would have happened every day
24 during advance voting.

25 Are you asking me specifically about this third

1 bullet point?

2 THE COURT: Yes.

3 THE WITNESS: I don't have any independent knowledge
4 or memory about what happened. Again, it was just a report to
5 us so that we were aware of any issues that were coming up,
6 that if it was something we needed to respond to, if it was
7 something systemic that we would need to know about.

8 But essentially, with these emails, Scott Tucker of
9 Dominion was letting us know what had happened, and generally,
10 Dominion was working with the counties to resolve whatever
11 issue it was.

12 THE COURT: Okay. Were you concerned at all about
13 that a poll worker would have -- be using a tech card to remove
14 the election and the Google text to speech from the machine,
15 that a poll worker would have been vested with that capacity?

16 THE WITNESS: It wouldn't have been -- I mean,
17 certainly not an optimal situation. I don't know if it would
18 have generated an investigation or not. You would have to ask
19 Ms. Watson.

20 THE COURT: Okay. Well, I think you could follow up
21 on this as necessary with another -- with Mr. Sterling or
22 Mr. Barnes. It seems like it is more in their bailiwick, even
23 though it deals with a security issue. But you're dealing
24 with, supposedly, security too, more specifically this. So --

25 MS. KAISER: Understood.

1 THE COURT: -- I'm going to appreciate the response
2 and just defer on it pending your asking any questions to the
3 other people who were copied.

4 MS. KAISER: Thank you, Your Honor.

5 BY MS. KAISER:

6 Q. Mr. Harvey, you have voted on BMDs in Georgia; is that
7 right?

8 A. I have.

9 Q. And you understand that the QR code is a portion of the
10 ballot that gets tabulated; right?

11 A. I do.

12 Q. When you voted on a BMD, you were not able to look at the
13 QR code printed on your ballot and read it to determine how the
14 QR code was getting tabulated; right?

15 A. Right. I could see the QR code, but I couldn't tell what
16 it contained.

17 Q. As a voter, you would prefer to cast a ballot that would
18 allow you to read the part of the ballot that is being
19 tabulated; right?

20 A. Well, on my ballot, I read the -- the names that were
21 printed underneath it indicated my selections. So I did that.

22 Q. But you just testified, sir, that you're aware that is not
23 the portion of the ballot that gets tabulated; right?

24 A. Yes, but it is my understanding that it is the same
25 information.

1 Q. But as a voter, you would prefer to cast a ballot that
2 would allow you to read the part of the ballot that is being
3 tabulated; is that right?

4 A. You're asking for my personal preference?

5 Q. As a voter, yes.

6 A. I -- I don't see an issue with having a system that scans
7 names. I also don't -- I understand some of the reasoning
8 behind the QR code. So if we could have a system where you
9 could have the names printed and be read, I would be fine with
10 that. I wouldn't have an issue with that.

11 Q. In fact, you would prefer it to a system that tabulates
12 codes from a QR code; right?

13 A. As a voter, I wouldn't have any objection with that. If
14 it gets the job done, a human readable form that can be
15 scanned, I think, is a good thing.

16 Q. You're aware that the Secretary of State's office
17 conducted a full hand re-count of the 2020 presidential
18 election results; right?

19 A. Yes, ma'am.

20 Q. By statute, the Secretary had to do one risk-limiting
21 audit that year; is that correct?

22 A. Yes, ma'am.

23 Q. The Secretary's office did not conduct a re-count or audit
24 for any other races in 2020; correct?

25 A. Did you say a re-count or audit?

1 Q. That's right.

2 A. I believe that is correct. There was a hand re-count and
3 then there was another re-count, so I --

4 Q. Of the same --

5 A. Of the same race.

6 Q. The same race.

7 A. Yes, ma'am.

8 Q. But there was not a re-count or an audit of any other race
9 in 2020; right?

10 A. Not that was conducted by the Secretary of State's office.

11 Q. When the State conducted the hand re-count, it examined
12 the human readable portion of the ballot; correct?

13 A. That's correct.

14 Q. But no one compared the human readable portion of any
15 specific ballot to how the QR code on that ballot was
16 tabulated; is that right?

17 A. Yes. You couldn't do that.

18 Q. And Georgia does not conduct a full hand re-count for
19 every election contest, does it?

20 A. No. Not -- not normally, no.

21 Q. Not --

22 A. I mean, not -- not that I -- I don't believe it has been
23 done since then.

24 Q. As part of the rollout of the BMD system in 2020, Dominion
25 sent technicians to each Georgia county to provide technical

1 support for a limited time; is that right?

2 **A.** That's correct.

3 **Q.** But it was understood that the technical support from
4 Dominion would end after the 2020 election; is that right?

5 **A.** I know it was going to end. I believe they extended it
6 when the runoff came up, and they may have extended it further
7 than that, but it had an expiration date for the technicians.

8 **Q.** And when that expiration date came, it was understood that
9 the county election officials would need to be ready to pick up
10 and run the system on their own; right?

11 **A.** That and/or use contractors to assist them, which some
12 counties did.

13 **Q.** And that would be a cost to the county; is that right?

14 **A.** Right. But you're correct, it would be the county
15 election officials' responsibility to run the system how they
16 best saw fit.

17 **Q.** By the end of 2020, there were still counties in Georgia
18 that felt overly reliant on their Dominion technicians;
19 correct?

20 **A.** By the end of 2020?

21 **Q.** Yes, sir.

22 **A.** Overly reliant --

23 MR. TYSON: Objection, Your Honor. I'm sorry. There
24 is no foundation for what the counties would have felt at the
25 end of 2020, I don't think.

1 MS. KAISER: Your Honor, this is something that
2 Mr. Harvey testified to in his declaration -- in his
3 deposition.

4 THE COURT: Just reframe your question.

5 MS. KAISER: Okay.

6 BY MS. KAISER:

7 Q. Mr. Harvey, it was your view that at by the end of 2020,
8 there was still counties that felt overly reliant on the
9 Dominion technicians; is that right?

10 A. I believe there were counties that were too reliant on
11 technicians.

12 Q. At least one county relied on their Dominion technician to
13 run the election tabulator; is that right?

14 A. I don't recall.

15 Q. That is not something -- you don't recall that there is at
16 least one county that allowed their Dominion technician to
17 actually run the election tabulator?

18 A. I'm not sure exactly what you mean by run the election
19 tabulator. You mean, put -- I'm not sure what you mean by
20 that.

21 Q. Yeah, actually tabulate votes.

22 A. Tabulate votes, meaning put paper ballots in the scanners?
23 Run the software that -- I'm not sure what you mean by
24 tabulating votes.

25 Q. Well, is it your view that Dominion technicians should

1 have been -- should have played any role in tabulating votes in
2 2020?

3 **A.** Dominion technicians often assisted the elections director
4 and their staff, but they should not have operated
5 independently at all. But it would not be unusual to have a
6 director with the technician sitting next to them giving them
7 advice, giving them directions, giving them clarification.
8 That wouldn't be that unusual.

9 It would be better to have the -- the independence from
10 that, but there was some counties that -- that needed more
11 assistance than others.

12 **Q.** There was no policy at the state level that prohibited
13 having a Dominion technician run -- tabulate votes; is that
14 right?

15 **A.** I don't think there was a policy. I think there is a
16 state law that requires how the votes are tabulated. And, you
17 know, with the new system rolling out and in a pretty
18 compressed time frame with elections being jammed together, we
19 knew -- and elections being moved, we knew that some counties
20 were going to need the assistance of technicians.

21 But it was always my understanding and communicated to the
22 counties that it was their job to run the elections; it was not
23 the technicians' job to run the election. The technicians
24 could assist.

25 And there are counties that have used technicians for

1 years with previous systems also to help with some of the
2 technical things. But it is ultimately the responsibility of
3 the county election director to do all the duties that are
4 required of them by the law.

5 **Q.** And if the county election director had delegated the
6 duties of tabulating votes during an election to a Dominion
7 technician, that would give you some concern; right?

8 MR. TYSON: Objection, Your Honor. I have let this
9 go for a little while. I fail to see what the relevance to any
10 of these questions is to what the claims are in this case of
11 the State's actions related to a burden on the right to vote.

12 MS. KAISER: Your Honor, I think the relevance of
13 this is showing that Dominion had a level of access to this.
14 It is proliferating access to the system, proliferating access
15 to machines, and it is just more and more vectors for people to
16 have access to machines that weren't supposed to.

17 THE COURT: Well, I don't think one case makes one
18 instance that makes that evident. I mean, we have lots of
19 people, definitely, who are circulating in the system, and
20 clearly from what happened when the -- from my recollection
21 when all of the software was swapped out at the very last
22 moment and all of the Dominion contractors came in, that it was
23 a challenging circumstance, one that I was concerned -- noted
24 my concern about in a prior order.

25 But I'm not sure here whether that, you know, it --

1 maybe you have other things you're going to hook this up with;
2 maybe you don't. But maybe, again, it is something to -- I
3 mean, I have allowed you to go as far as you are, and I think
4 that anything further probably would be better posed to those
5 who were in charge of the security and the -- as well as the
6 department itself that was implementing at that point in time
7 the whole handling of the introduction of the system.

8 So I mean, I think -- he was copied, yes, but I'm not
9 sure that he is still the right person to be answering the
10 question.

11 MS. KAISER: Understood, Your Honor. I'll move on.
12 Thank you.

13 THE COURT: I want to say at the same time, you know,
14 I said you need to get back about the question of the -- to
15 Gabe Sterling or somebody else in IT regarding the CISA's
16 advisory regarding the SolarWinds major incident which involved
17 also Russian foreign intelligence, according to the CISA
18 advisory.

19 You know, this is a whole other question. I mean, I
20 think we didn't have a complete foundation for it by the way it
21 was introduced. I mean, I was just looking at what the CISA
22 advisory was.

23 But again, more properly taken up by somebody in
24 higher -- not to say that Mr. Harvey wasn't a very important
25 part of the responsibility for asserting responsibility and

1 charge for that responsibility in the elections department.
2 But there are others who really were the chief people
3 dealing -- would have been charged, it seems to me, both with
4 the responsibility of dealing with this and following up.

5 MS. KAISER: Thank you, Your Honor.

6 THE COURT: And when I've referenced this, I'm just
7 referencing the public document, which is -- it was last -- it
8 seems to have been in a continuing upgraded one, but that one
9 that starts in December of '20, and then the last thing I see
10 is from April of '21. And again, it is a CISA advisory.

11 I think you should proceed on to something else at
12 this juncture.

13 MS. KAISER: Thank you, Your Honor.

14 THE COURT: It is 5:30. I don't know how much more
15 you have.

16 MS. KAISER: Not very much, Your Honor. Just a few
17 more minutes.

18 THE COURT: Well, let's finish up then and then we
19 can do the -- the State can proceed later. I don't know if
20 there are any other questions, but let's -- we'll do the rest
21 tomorrow.

22 MS. KAISER: Thank you, Your Honor.

23 BY MS. KAISER:

24 Q. Mr. Harvey, when you were elections director, one of your
25 key responsibilities was to coordinate with county officials to

1 administer elections; correct?

2 **A.** Yes, ma'am.

3 **Q.** And Georgia has 159 counties; right?

4 **A.** Yes.

5 **Q.** Since the implementation of the current BMD voting system,
6 each of those 159 counties uses the same voting equipment;
7 right?

8 **A.** That's correct.

9 **Q.** And the software that runs on that voting equipment is the
10 same; right?

11 **A.** Yes, ma'am.

12 **Q.** And the counties have possession of the voting equipment;
13 is that right?

14 **A.** Yes, ma'am.

15 **Q.** And as Mr. Tyson has pointed out, the counties are
16 responsible for safely storing and safeguarding that equipment;
17 is that right?

18 **A.** That's correct.

19 **Q.** Each county determines who gets administrator access to
20 its voting equipment; right?

21 **A.** Yes.

22 **Q.** In your interactions with county officials, you have found
23 that they had varying levels of experience and interest and
24 knowledge about election security; is that right?

25 **A.** Yes. Primarily on, I guess, varying levels, probably the

1 more technical you get with cyber-type stuff. You know, you
2 have got physical security. You have got equipment security.
3 You have got cybersecurity. So it varies from county to
4 county.

5 **Q.** And your view is that any one of Georgia's 159 counties
6 could be a weak point; right?

7 **A.** It could.

8 **Q.** Could you turn to Tab 15 in your binder, sir.

9 **A.** Okay.

10 **Q.** Do you recognize this document?

11 I'm sorry. This is Plaintiffs' Exhibit 78.

12 **A.** Yes, ma'am.

13 **Q.** If you look at the third page, there is an email from
14 James Barnes --

15 **A.** Yes, ma'am.

16 **Q.** -- sent to you on Friday, May 7, '21.

17 Do you see that?

18 **A.** Yes.

19 **Q.** And the subject is Coffee County?

20 **A.** Yes, ma'am.

21 **Q.** Mr. Barnes wrote, When I took over at the Coffee County
22 office, the attached business card was at the base of Misty
23 Hampton's computer monitor.

24 Do you see that?

25 **A.** I do.

1 Q. And Misty Hampton was Mr. Barnes' predecessor as a
2 supervisor of elections in Coffee County?

3 A. Yes. I would just clarify. It says Misty Hayes' computer
4 monitor.

5 Q. Oh, I'm sorry.

6 A. I know she went by both names at different points.

7 Q. Thank you for the clarification.

8 But you're aware that she was Mr. Barnes' predecessor; is
9 that right?

10 A. That's correct.

11 Q. And then if you flip to the back page, you see a scan of a
12 business card that says Douglas Logan?

13 A. Yes, ma'am.

14 Q. Cyber Ninja.

15 Do you see that?

16 A. Yes, ma'am.

17 Q. Mr. Barnes sent this email to you in the course of your
18 work as the elections director; is that right?

19 A. Yes, ma'am.

20 Q. And if you turn back to the first page, there is an email
21 from you in the middle where you forwarded this email from
22 Mr. Barnes -- or excuse me, you copied into this email chain
23 Frances Watson and Michael Barnes.

24 Do you see that?

25 A. Yes, ma'am.

1 Q. You said, Thanks for sending this. I think it might be
2 prudent to see if there has been any contact between the person
3 on the card and anyone in your office and/or if there has
4 been -- if they had any access to any of your equipment.

5 Do you see that?

6 A. I do.

7 Q. And then you emailed -- let's see. Sorry. At the top,
8 Frances Watson forwarded your email to Pamela Jones.

9 Do you see that?

10 A. Yes.

11 MS. KAISER: Your Honor, we would move to admit
12 Plaintiffs' Exhibit 78.

13 MR. TYSON: Your Honor, we would object to the
14 admission of 78, both on hearsay with the statements from
15 Mr. James Barnes because he is not here, also on relevance.
16 Federal Rules of Evidence 40 -- 402 says you can't establish
17 liability -- evidence not relevant to establishing liability is
18 inadmissible. And we would submit that under the
19 Anderson-Burdick standard, causation can't be established when
20 there is an intervening third-party conduct.

21 When this Court looked at this issue in its summary
22 judgment order, we understand it ruled on relevance of Coffee
23 County in the context of standing. We would submit that as to
24 causation, which is distinct from traceability, traceability is
25 not considered proximate cause, while proximate cause is

1 required for constitutional causation on the merits.

2 Our cases on that are *Zatler v. Wainwright*, 802 F.2d
3 397 at 401; it's the Eleventh Circuit in 1986. *Jackson v.*
4 *Sauls* in 206 F.3d 1156 at 1168; it is Eleventh Circuit 2000.
5 And the *Fair Fight Action Case*, 634 F. Supp. 3d 1128 at
6 Page 1199 from the Northern District in 2022.

7 MR. CROSS: Your Honor, could I just get
8 clarification.

9 Does a relevance objection have anything to do with
10 the Coffee County breach? Is that what we're hearing?

11 MR. TYSON: It is, Your Honor.

12 MR. CROSS: Do you need a response?

13 THE COURT: Well, we'll stop at this point and you
14 can address it tomorrow.

15 MR. CROSS: Does Your Honor need a response to that?

16 THE COURT: You'll address it tomorrow.

17 MR. CROSS: Okay.

18 THE COURT: And if there is something in particular
19 you want me to look at tonight, go ahead and tell me what you
20 want me to look at.

21 MR. CROSS: I would say, first and foremost, Your
22 Honor's own decision on it, but we'll get you more.

23 THE COURT: Well, I'm just saying if you want to send
24 us any authority that addresses their authority, send it to us
25 tonight so that we can look at it and then I'm not walking in

1 blindsided tomorrow.

2 And just -- you want it sent to you or do you want it
3 sent to Harry?

4 Send it to Mr. Martin, and he will forward it to us.

5 MR. TYSON: Your Honor, if I could raise one issue
6 for Mr. Harvey. He has a medical issue in his family that
7 involves an important doctor's appointment tomorrow.

8 THE COURT: What time is it?

9 THE WITNESS: It was changed to 9:15 in the morning
10 just in the last about two hours.

11 THE COURT: I'm sorry.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Do you think it will take all day?

14 THE WITNESS: No, ma'am. I think it will take an
15 hour-ish. It is in Decatur. I would think I could probably be
16 here 1:00 or so, maybe slightly before lunch.

17 THE COURT: Is there any problem for that for
18 you-all?

19 MS. KAISER: No, Your Honor.

20 THE COURT: That's fine. And we'll deal with some of
21 these issues before then so that we're not --

22 MR. TYSON: Your Honor, I understand on that, and I
23 don't mean to cause further issues.

24 If this is the last point for Mr. Harvey, do we want
25 to reserve ruling on the admission, ask the question, and then

1 let him be free to go?

2 I don't know what Ms. Kaiser's outline is.

3 MS. KAISER: Your Honor, I had one additional line of
4 questions after this and --

5 THE COURT: A line of questions after this is
6 different than one question.

7 MR. TYSON: I didn't know the answer.

8 THE COURT: All right. She may have thought of
9 others by now.

10 All right. So I understand you're retired now; is
11 that right?

12 THE WITNESS: No, ma'am. I'm working, but I'm
13 available.

14 THE COURT: All right. Very good. Well, simply
15 don't -- but are you working for the department, or are you
16 working --

17 THE WITNESS: I'm working for the Georgia Peace
18 Officers Standards & Training Council.

19 THE COURT: Well, just don't discuss your testimony
20 with any other witnesses. That is all I'm really trying to --

21 THE WITNESS: Yes, ma'am. And I'll proceed here
22 tomorrow as soon as we're done.

23 THE COURT: Just send a message to counsel as to
24 when -- as things evolve --

25 THE WITNESS: Yes, ma'am.

1 THE COURT: -- so that we have a good reasonable
2 expectation. I don't want you rushing for nothing because we
3 may start at -- you know, take a break at 12:15. I don't know.

4 Who is your next witness afterwards? Do you know?

5 MR. CROSS: I think Hamilton; right?

6 MS. KAISER: David Hamilton.

7 MR. FISHER: I think Mr. Barnes is next.

8 MR. CROSS: Why are you guys asking me? You've
9 already designed it.

10 MR. BROWN: Hamilton and then Barnes. Thank you.

11 MR. CROSS: We've got Sinners.

12 MR. BROWN: And Sinners.

13 THE COURT: When you send us the email, tell us who
14 you are thinking about so we can be a little bit ready and have
15 some idea of whether we're going -- like, if you don't need to
16 be here until 1:30, you don't need to be here until 1:30.

17 I'll ask counsel to be in touch with you.

18 THE WITNESS: Thank you, ma'am.

19 THE COURT: Good luck tomorrow. I'm sorry we
20 disrupted your appointment today.

21 **(There was a brief pause in the proceedings.)**

22 **(The proceedings were thereby adjourned at 5:42**
23 **PM.)**

24

25

C E R T I F I C A T E

UNITED STATES OF AMERICA

NORTHERN DISTRICT OF GEORGIA

I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of the United States District Court, for the Northern District of Georgia, Atlanta Division, do hereby certify that the foregoing 292 pages constitute a true transcript of proceedings had before the said Court, held in the City of Atlanta, Georgia, in the matter therein stated.

In testimony whereof, I hereunto set my hand on this, the 10th day of January, 2024.



SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT
OFFICIAL CERTIFIED TRANSCRIPT

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